

1 Honorable James L. Robart  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RICHARD DWYER, ) NO. 2:20-cv-01236-JLR-MAT  
Plaintiff, )  
v. ) PLAINTIFF'S RESPONSE  
TRINITY FINANCIAL SERVICES, LLC, ) TO DEFENDANT'S  
Defendant. ) MOTION TO DISMISS  
Note on Motion Calendar:  
Friday, March 12, 2021  
Oral Argument Requested

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Plaintiff RICHARD DWYER, through his attorney RICHARD L. POPE, JR., presents this response to Defendant Trinity Financial Services, Inc.'s Motion to Dismiss (dkt. 24).

**MOTION FOR EXTENSION OF TIME (separately noted)**

Plaintiff has filed a separate motion for extension of time (dkt. 25) and maintains that motion. Plaintiff will seek leave of court under Rule 15 F.R.Civ.P. to file an amended complaint to more fully set forth his case and add additional claims in the very near future in any event.

**RELIEF REQUESTED ON DEFENDANT'S MOTION**

1. All of Defendant's motion to be dismissed should be denied, except for dismissal of Plaintiff's Sixth Claim for Relief under RCW 19.148.030(2). If an amended complaint is permitted, Plaintiff will not include any claims related to RCW 19.148.030(2).

2. Plaintiff should be permitted to file an amended complaint to add additional claims for relief and to resolve any pleading deficiency issues in Plaintiff's state court filed complaint.

1       3. Defendant has not identified any contractual provisions that would allow recovery  
 2 of attorney fees against Plaintiff for an unsuccessful lawsuit related to the claims in this lawsuit.

3       4. There is no bad faith by Plaintiff which would permit recovery of attorney fees in  
 4 the event that Plaintiff's FDCPA claims were dismissed by the Court.

5       5. Plaintiff objects to consideration of the purported August 13, 2015 letter presented  
 6 by Defendant at dkt. 24-2. At best, this letter, if believed true, might offer Defendant a factual  
 7 defense. Plaintiff never received this letter and believes the same to be a recent creation.

8       6. Plaintiff notes that Defendant's rights (if any) to receive the mortgage loan  
 9 payments being disputed by Plaintiff would be a compulsory counterclaim that has not, to date,  
 10 been asserted by Defendant as required by Rule 13(a)(1) F.R.Civ.P. and that outright dismissal  
 11 would operate a res judicata to prevent Defendant from collecting anything on the loan at issue.

12       **Standard for Determining Rule 12(c) Motions for Judgment on the Pleadings**

13       A motion for judgment on the pleadings under Rule 12(c) F.R.Civ.P. or a motion to dismiss  
 14 for failure to state a claim under Rule 12(b) F.R.Civ.P. are judged on the same legal basis. Such a  
 15 motion should be granted only if it appears beyond doubt that the plaintiff can prove no set of facts  
 16 in support of its claim which would entitle it to relief. Conley v. Gibson, 355 U.S. 41 (1957);  
 17 California Dump Truck Owners Ass'n v. Associated General Contractors, 562 F.2d 607 (9<sup>th</sup> Cir.  
 18 1977). When considering a motion to dismiss for failure to state a claim, the court must take  
 19 factual allegations of the complaint as true and resolve any ambiguities or doubts regarding  
 20 sufficiency of claim in favor of plaintiff. Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278  
 21 (5th Cir. 1993).

22       Since this case was originally started by Plaintiff in King County Superior Court, sufficiency  
 23 of the complaint should be judged by Wash. CR 12(b)(6) (analogous to its federal counterpart) and  
 24 state case law – and if not, Plaintiff should be given leave to amend. "Federal cases are of interest  
 25 but not binding". Orwick v. City of Seattle, 103 Wn.2d 249, 256, 692 P.2d 793 (1984).

26       In Orwick, the Washington Supreme Court upheld an extremely poorly drafted complaint  
 27 against a CR 12(b)(6) motion, even though "[T]he legal basis for [plaintiff's] claim [was] neither

1 clear from the pleadings, nor [was] it adequately developed in the briefs." 103 Wn.2d at 254. CR  
 2 12(b)(6) motions are granted only "sparingly and with care":

3 Dismissal for failure to state a claim may be granted only if "it appears beyond  
 4 doubt that the plaintiff can prove no set of facts, consistent with the complaint, which  
 would entitle the plaintiff to relief".... [citation omitted]

5 As to the facts, the complaint survives a CR 12(b)(6) motion if any state of  
 6 facts could exist under which the claim could be sustained.... [citation omitted]  
 (emphasis in original)

7 Orwick, 103 Wn.2d at 254-55.

8 Defendant chose to remove this action to federal court. Upon removal, Defendant had the  
 9 option of testing the sufficiency of Plaintiff's complaint under the federal pleading standards by  
 10 filing a Rule 12(b)(6) motion. Defendant chose not to, and instead answered the complaint.  
 11 Plaintiff should be allowed the opportunity to amend his complaint from the more lenient state law  
 12 standards, to the higher standard of specificity of pleading required under federal case law, now that  
 13 Defendant has finally filed a motion challenging pleading sufficiency. Plaintiff will in any event be  
 14 asking permission shortly to file an amended complaint, as previously noted.

15 **Objection to Purported August 13, 2015 Letter at Dkt. 24-2**

16 Generally, the scope of review on a motion to dismiss for failure to state a claim is limited to  
 17 the contents of the complaint. *See Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1141 n. 5  
 18 (9<sup>th</sup> Cir. 2003). A court may consider evidence on which the complaint "necessarily relies" if: (1)  
 19 the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no  
 20 party questions the authenticity of the copy attached to the 12(b)(6) motion. *See Branch v. Tunnell*,  
 21 14 F.3d 449, 453-54 (9th Cir.1994), *overruled on other grounds by Galbraith v. County of Santa*  
 22 *Clara*, 307 F.3d 1119 (9th Cir.2002); *see also Warren*, 328 F.3d at 1141 n. 5, *Chambers v. Time*  
 23 *Warner, Inc.*, 282 F.3d 147, 153 n. 3 (2d Cir.2002). The court may treat such a document as "part of  
 24 the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss  
 25 under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.2003).

26 Defendant has offered a purported August 13, 2015 letter, that Defendant claims to have  
 27 sent Plaintiff notifying that servicing of the loan was transferred from Dreambuilder Investments

1 LLC to Defendant. (dkt. 24-2) This letter is NOT referred to in Plaintiff's complaint, which  
 2 instead states that Plaintiff received no notice whatsoever from anyone related to the second  
 3 mortgage loan from before February 28, 2008, when Plaintiff filed a bankruptcy, until April 8,  
 4 2020, when Defendant sent a letter to Plaintiff. (Complaint, ¶¶ 8-10) Instead of referring to the  
 5 purported August 13, 2015 letter, the Complaint disputes its very existence. While the letter  
 6 might be relevant to Defendant's defense, it is obviously in no way part of Plaintiff's claims.

7 Plaintiff also believes the purported August 13, 2015 letter to be a recent fabrication, with  
 8 Defendant attempting to falsely say Plaintiff was given notice it was a loan servicer. Defendant  
 9 did not a Consumer Loan Company License from Washington until January 10, 2018 – legally  
 10 required in order to service a residential mortgage loan (regardless of whether a company  
 11 services loans that they own or services loans that others own) under RCW 31.04.035(1).  
 12 Violation of this law, in addition to being a crime under RCW 31.04.175(1), is also a violation of  
 13 the Washington Consumer Protection Act under RCW 31.04.208, which provides for money  
 14 damages and other civil relief. (The prior alleged servicer, Dreambuilder, has never had a loan  
 15 servicing license in Washington.) The fact that neither Defendant nor Dreambuilder had any  
 16 license to service loans in 2015 makes it less likely they would have notified Plaintiff that either  
 17 was a loan servicer. Silence about servicing and transfer of servicing is consistent with the total  
 18 lack of communication for over 12 years about the loan. In any event, Plaintiff need merely  
 19 deny the veracity of the alleged letter to prevent its consideration on a Rule 12(c) motion.

20 **Summary of Main Relevant Facts Pertaining to Claims**

21 The following are taken from the main statement of facts in Plaintiff's Complaint and all  
 22 must be assumed to be true for the purposes of a Rule 12(c) motion. There are additional facts in  
 23 various sections of the individual causes of action set forth in Plaintiff's complaint, and there are  
 24 additional facts, consistent with Plaintiff's complaint, which can support Plaintiff's complaint.

25 4. Plaintiff owns a home he resides in King County, Washington at the  
 26 street address of 25322 113th Ave SE, Kent, Washington 98030 and the legal description of:  
 27

LOT I, CITY OF KENT SHORT PLAT NO. SP 90-19 RECORDED UNDER RECORDING NO. 9102140575, BEING A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 22 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON. (Assessor Tax Parcel No. 202205-9071)

5. On July 12, 2006, Plaintiff executed two deeds of trust on his home in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary. In reality, MERS was “nominee” under these deeds of a trust for Ownit Mortgage Solutions, Inc., who was intended to be the true beneficial owner under these deeds of trust. There was a first position deed of trust in the amount of \$209,600.00 recorded under King County Recording No. 20060717000986 and a second position deed of trust in the amount of \$52,400.00 recorded under King County Recording No. 20060717000987. Both of these documents were recorded on July 17, 2006.

6. Plaintiff paid no more than a few payments on the second position deed of trust, reducing the principal balance to \$52,396.20. Plaintiff has not made any payments on the second position deed of trust since some time prior to December 31, 2006.

7. Shortly after Plaintiff executed the second position deed of trust, Ownit Mortgage Solutions, Inc. transferred beneficial interest in the same to Greystone Solutions, Inc. In turn, Greystone Solutions, Inc., gave notice to Plaintiff that it now owned the second position deed of trust. No recordings were filed in connection with this change of ownership with the King County Recorder's Office, with MERS remaining as legal beneficiary in the public records.

8. On February 28, 2008, Plaintiff filed a Chapter 13 bankruptcy in the United States Bankruptcy Court for the Western District of Washington at Seattle, No. 08-11106-KAO. Plaintiff's main objective was to keep his home and to avoid loss through foreclosure. This Chapter 13 bankruptcy was dismissed without plan confirmation on January 30, 2009.

9. Greystone Solutions, Inc. was listed as a secured creditor on Plaintiff's 2008 Chapter 13 bankruptcy, and was given notice of the bankruptcy filing at both a Buffalo, New York street address and a Medford, Massachusetts post office box address. Greystone Solutions, Inc. did not file a proof of claim or otherwise communicate regarding Plaintiff's bankruptcy.

1           10. Plaintiff did not hear anything further from Greystone Solutions, Inc. or anyone  
 2 else claiming to hold any interest in the second position deed of trust until April 8, 2020, when  
 3 Defendant mailed a letter and other materials claiming to own the second position deed of trust.

4           11. On April 27, 2017, Plaintiff filed a Chapter 13 bankruptcy in the United States  
 5 Bankruptcy Court for the Western District of Washington at Seattle, No. 17-11970-CMA.  
 6 Plaintiff's main objective was to keep his home and to avoid loss through foreclosure. There  
 7 was a pending foreclosure action on the first position deed of trust, which by that time was being  
 8 serviced by Select Portfolio Servicing.

9           12. By the time of the April 27, 2017 Chapter 13 bankruptcy filing, Plaintiff had not  
 10 heard anything from Greystone Solutions, Inc. or anyone else claiming an interest in the second  
 11 position deed of trust since prior to the February 28, 2008 Chapter 13 bankruptcy filing. Plaintiff  
 12 assumed that Greystone Solutions, Inc. or whoever claimed an interest had abandoned all hope  
 13 of ever collecting anything and that the holder of the second position deed of trust had decided  
 14 the obligation was barred by the statute of limitations and was no longer legally enforceable.  
 15 Plaintiff did not list Greystone Solutions, Inc. or anyone else on the 2017 bankruptcy filing, due  
 16 to the large passage of time and the lack of actual knowledge of the second deed of trust holder.

17           13. When Plaintiff filed the 2017 Chapter 13 bankruptcy, there was a total of about  
 18 \$366,567.00 owed on the first position deed of trust, with the fair market value of his home  
 19 being about \$303,000.00. Even without consideration of the second position deed of trust, the  
 20 debt on the first position deed of trust exceeded the fair market value of the property by over  
 21 \$60,000.00. In spite of the property being significantly upside down, even with consideration of  
 22 just the first position deed of trust, Plaintiff placed considerable value on being able to own and  
 23 keep his home, and was willing to rehabilitate and pay down the first deed of trust to do this.

24           14. By contrast, had the holder of the second position deed of trust been currently  
 25 asserting any secured interest at the time of the 2017 Chapter 13 bankruptcy, Plaintiff would not  
 26 have been willing to also pay off the second deed of trust in order to save and keep his home –  
 27 especially since debt would have exceeded value by considerably more than \$100,000.00.

1       15. In addition, had the holder of the second position deed of trust been currently  
 2 asserting any secured interest at the time of the 2017 Chapter 13 bankruptcy, Plaintiff would  
 3 have been able to completely eliminate any security interest of the second deed of trust in an  
 4 adversary proceeding that could have been filed in conjunction with the bankruptcy case. The  
 5 second position deed of trust was fully unsecured in economic terms, since the first position deed  
 6 of trust fully encumbered the fair market value of Plaintiff's home. Since there was no actual  
 7 economic position in the home securing the second position deed of trust, its legal secured  
 8 interest in Plaintiff's home could have been eliminated through an adversary proceeding.

9       16. Plaintiff made considerable economic payments through the 2017 Chapter 13  
 10 bankruptcy case, in reliance upon no claim being asserted by any purported holder of the second  
 11 position deed of trust. Plaintiff paid \$2,000.00 in an advance payment for his attorney fees,  
 12 \$310.00 payment for the filing fee, and \$53,596.00 in Chapter 13 plan payments through the  
 13 Chapter 13 Bankruptcy Trustee. Of this \$53,596.00 in Chapter 13 plan payments, \$1,500.00  
 14 went for the balance of Plaintiff's attorney fees, \$4,534.19 for Chapter 13 trustee administrative  
 15 costs, and \$49,061.81 in disbursements to creditors. Of these creditor disbursements, \$25,544.19  
 16 went towards current payments on the first position deed of trust and another \$5,110.49 towards  
 17 arrearages on the first position deed of trust. As a result of both the reduction in the amount  
 18 owed on the first position deed of trust and appreciation of the value of Plaintiff's home during  
 19 the 2017 Chapter 13 bankruptcy (which was dismissed on January 10, 2019), the interests of the  
 20 first position deed of trust holder in Plaintiff's home were considerably improved. Moreover, if  
 21 costs of sale were not considered, there may be some fair market value in the Plaintiff's home at  
 22 July 2020 values, that would be applicable to a second position deed of trust, even though a  
 23 foreclosure sale (or even regular sale) would net nothing for the second position whatsoever.

24       17. On August 1, 2016, MERS executed an assignment of the second position deed of  
 25 trust to Defendant. This assignment was recorded by Defendant with King County Records on  
 26 August 24, 2016 under recording number 20160824001578. Defendant did not provide any  
 27 notice to this assignment to Plaintiff until a letter and other materials were mailed April 8, 2020.

1       18. Defendant registered with the Washington Secretary of State as a foreign LLC on  
 2 October 9, 2014. Defendant obtained an Out-of-State Collection Agency license from the  
 3 Washington Department of Licensing on December 22, 2014.

4       19. Under the amendments enacted by Laws 2013, Chapter 148, Section 1, which  
 5 became effective on October 1, 2013 and are currently found at RCW 19.16.110(4)(d), “any  
 6 person or entity that is engaged in the business of purchasing delinquent or charged off claims  
 7 for collection purposes, whether it collects the claims itself or hires a third party for collection or  
 8 an attorney for litigation in order to collect such claims” must have a collection agency license.

9       20. Defendant has purchased at least 50 delinquent second position deeds of trust in  
 10 King County since 2013 (at least 10 of which were purchased while Defendant did not have the  
 11 required collection agency license) and probably around 150 to 200 such delinquent second  
 12 position deeds of trust in all of Washington during the same time period.

13       21. Defendant’s license as an Out-of-State Collection Agency pursuant to RCW  
 14 19.16.100(11) would allow Defendant to solely “collect[] debts from debtors located in this state  
 15 by means of interstate communications, including telephone, mail, or facsimile transmission,  
 16 from [Defendant’s] location in another state”. This would allow Defendant to send letters,  
 17 telephone calls and e-mails to Washington homeowners urging them to pay the delinquent loans  
 18 they had purchased, but would prohibit activities physically taking place in Washington, such as  
 19 filing collection lawsuits or foreclosure lawsuits or having trustee foreclosure sales conducted.

20       22. According to a search of court records and property records in King County, there  
 21 have been no lawsuits filed by Defendant or attempts to conduct any trustee foreclosure sale.  
 22 Based on this lack of action in King County and presumed lack of similar action elsewhere in  
 23 Washington, Defendant does not actually intend to file any lawsuit or conduct any foreclosures.

24       23. The letter Defendant mailed Plaintiff on April 8, 2020 stated that Defendant had a  
 25 valid security interest in Plaintiff’s home that could be enforced by foreclosure against the  
 26 property. Defendant requested Plaintiff make contact to negotiate payment arrangements with  
 27 Defendant of this alleged security interest and provide Defendant personal financial information.

1                   **Statute of Limitations Claim is Valid for At Least Some Installments, if Not Entire Loan**

2                   The second mortgage deed of trust loan is an installment note contract dated July 11,  
 3 2006, which calls for 360 installments of principal and interest starting on September 1, 2006  
 4 and ending on August 1, 2006. (dkt. 24-1 at 2) Plaintiff, at most, paid the September 1, 2006  
 5 installment. All installments due before March 8, 2015 are now time-barred, at the minimum.<sup>1</sup>

6                   A deed of trust with monthly loan payments is a written installment contract. Written  
 7 contracts are subject to a six-year limitations period in Washington. See RCW 4.16.040(1). For  
 8 installment contracts, each installment triggers the limitations period for that missed payment:  
 9 "[W]hen recovery is sought on an obligation payable by installments[,] the statute of  
 10 limitations runs against each installment from the time it becomes due; that is, from the time  
 11 when an action might be brought to recover it." Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d  
 12 142, 144-45 (1945); *see also* 25 David K. Dewolf, Keller W. Allen & Darlene Barrier Caruso,  
 13 Washington Practice: Contract Law and Practice § 16:20, at 196 (2012-13 Supp.) ("Where a  
 14 contract calls for payment of an obligation by installments, the statute of limitations begins to  
 15 run for each installment at the time such payment is due."). *see also* Jarvis v. Fed. Nat'l Mortg.  
 16 Ass'n, Case No. C16-5194-RBL (W.D. Wa. 04/24/2017)

17                   As Defendant concedes, if the facts show that a prior holder of the second mortgage made  
 18 an acceleration demand or wrote off the loan more than six years ago, the entire amount due on  
 19 the deed of trust would be time barred. For purposes of a Rule 12(c) motion, these hypothetical  
 20 facts must be assumed to exist and would bar dismissal at the pleading stage.

21                   But even absent acceleration or write off more than six years ago, all monthly installments  
 22 that were due more than six years ago (everything due before March 8, 2015) is now time barred.  
 23 Frankly, even on a Rule 56 motion, Defendant would not be able to avoid summary judgment in  
 24 Plaintiff's favor time barring these long past due installments. Certainly, Plaintiff's Complaint  
 25 on statute of limitations must survive the very low bar of a Rule 12(c) motion in any event.

26                   <sup>1</sup> Defendant has not counterclaimed on the promissory note at issue in this litigation. If such a  
 27 counterclaim were made in this action, it might relate back to the August 2, 2020 initiation of this lawsuit by service  
 in state court. Since no counterclaim has been interposed to date, the statute of limitations clock keeps running.

## **Plaintiff's Claim for Laches is Also Valid**

As a preliminary matter, Defendant incorrectly asserts that the ONLY way Plaintiff may obtain a quiet title judgment under Washington law is RCW 7.28.300, relating to a “mortgage or deed of trust would be barred by the statute of limitations”. Defendant’s position is incorrect.

The general statute for quieting title in Washington is RCW 7.28.010, which provides the basis for anyone claiming an interest in real property to quiet the alleged interests of anyone asserted not to have a valid interest: **“Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title”**. Quiet title is an action developed in equity, and can be used to quiet title not only on specific legal theories, but also on equitable theories. Finch v. Matthews, 74 Wn.2d 161, 443 P.2d 833 (1968).

Laches is an equitable defense based on estoppel. A debtor asserting the doctrine of laches must affirmatively establish: (1) knowledge by the creditor of facts constituting a cause of action or a reasonable opportunity to discover such facts, (2) unreasonable delay by the creditor in commencing the action; and (3) damage to the debtor resulting from the delay in bringing the action. Hayden v. Port Townsend, 93 Wn.2d 870, 874-75 (1980). Laches is equitable in nature, it is an “extraordinary” defense, and the party asserting laches must prove the defense by clear and convincing evidence. Ward v. Richards & Rossano, P.S., 51 Wn. App. 423, 435 (1988); Brost v. L.A.N.D., Inc., 37 Wn. App. 372, 375-76 (1984); Arnold v. Melani, 75 Wn.2d 143, 148 (1968).

Defendant cites no authority supporting its theory that Plaintiff must wait for Defendant to actually threaten foreclosure, before asserting laches. Such proposition is absurd – if the facts exist now, a property owner should be able to assert them now, rather than wait for years or perhaps for(n)ever for a mortgage holder to foreclose. To have to wait makes claims get stale before being adjudicated, and prevents property titles from being timely resolved judicially.

1           In any event, on November 12, 2020, Defendant engaged a law firm (Wright Finlay &  
 2 Zak) to send a letter to Plaintiff declaring him in default on the loan, specifically demanding  
 3 Plaintiff send \$39,096.01 in payment of the alleged arrearages, claiming that the total payoff of  
 4 the loan was nearly \$40,000 more than the principal balance, stating that legal action or  
 5 foreclosure may be commenced against Plaintiff, and stating that Plaintiff had the right to sue  
 6 Defendant to assert any defense against the loan or deed of trust. (Exhibit 2)

7           While these above facts are not currently in the complaint, Plaintiff will be seeking to file  
 8 an amended complaint asserted these facts – which will clearly make a laches defense ripe even  
 9 under Defendant's theories. And if laches is somehow premature at this point, any dismissal  
 10 would have to be without prejudice to Plaintiff being able to assert laches when it becomes ripe.

11           The remainder of Defendant's argument is an attempt to win a summary judgment type  
 12 standard, without having the Court evaluate any facts – just Defendant's limited presentation of a  
 13 few alleged facts that Defendant believes to be relevant. That is not the Rule 12(c) standard.

14           Plaintiff's laches argument is not based solely on Defendant's (and its predecessors in  
 15 interest) failure to foreclose on the property, but on Defendant's (and predecessors) complete  
 16 silence about the second mortgage for over 12 years. From Plaintiff's Complaint:

17           100. Defendant and its predecessors in interest have been aware since  
 18 July 2006 (typo of 2016 in Complaint) of their rights under the second position  
 19 deed of trust, aware of Plaintiff's non-payment of the same starting in about  
 20 August or September of 2006, have delayed unreasonably in bringing any action to  
 21 enforce the second position deed of trust and associated promissory note  
 22 (including failure to take any foreclosure action and/or litigation, failure to file a  
 23 proof of claim in the 2008 Chapter 13 bankruptcy, failure to notify Plaintiff of  
 24 change of ownership and change of servicing in connection with the August 2016  
 25 ownership and servicing transfer and any prior transfers of ownership and  
 26 servicing, and failure to provide Plaintiff with any periodic billing statements since  
 27 at least 2008 to the present time, and Plaintiff would be damaged if Defendant is  
 28 allowed to assert a valid security interest and/or personal obligation. Enforcement  
 should therefore be barred under the doctrine of laches.

29           Plaintiff believes all these delays, taken together, are objectively unreasonable – even  
 30 more so given requirements under federal law to send periodic billing statements, and to notify  
 31 about changes in servicing and ownership. Even if 14 years of nonenforcement by itself was not  
 32 unreasonable delay, over 12 years of complete silence – contrary to law – was not reasonable.

1 Plaintiff has also alleged specific damages as a result of this delay. Complaint, ¶¶ 12-16.  
 2 Plaintiff filed his 2017 Chapter 13 to avoid foreclosure on the first mortgage. At the time,  
 3 Plaintiff's home was "underwater" on the first mortgage, and the second mortgage could have  
 4 been avoided in a Chapter 13 plan. Plaintiff did not think about or list the second mortgage,  
 5 since he had heard nothing at all from anyone since 2008, and had been lulled into not even  
 6 thinking about it anymore. Plaintiff spent over \$56,000 in Chapter 13 and other payments in the  
 7 bankruptcy, the vast majority of which went to the first mortgage, or trustee and related fees.  
 8 Had Defendant actively asserted its interests by even sending Plaintiff periodic statements, then  
 9 Plaintiff would have known to avoid the fully underwater second mortgage, been motivated to do  
 10 so<sup>2</sup>, and wiped out the second mortgage on successful Plan completion. In the alternative,  
 11 Plaintiff would not have paid over \$56,000 in the Chapter 13, just to improve the position of the  
 12 second mortgage holder from being fully unsecured to perhaps attaching to some small equity.

13 **Plaintiff's Waiver Claim is Valid**

14 Waiver is "the intentional and voluntary relinquishment of a known right". Jones v.  
 15 Best, 134 Wn.2d 232, 241-42, 950 P.2d 1 (1998). Defendant and its predecessors in interest  
 16 have known about the rights created by the second position deed of trust and associated  
 17 promissory note since their creation in July 2006. Defendant and its predecessors in interest  
 18 have intentionally relinquished these known rights by failure to take any foreclosure action  
 19 and/or litigation, failure to file a proof of claim in the 2008 Chapter 13 bankruptcy, failure to  
 20 notify Plaintiff of change of ownership and change of servicing in connection with the August  
 21 2016 ownership and servicing transfer and any prior transfers of ownership and servicing, and  
 22 failure to provide Plaintiff with any periodic billing statements since at least 2008 to the present  
 23 time. Enforcement should therefore be barred under the doctrine of waiver.

24 Defendant's waiver arguments fail to address the vast majority of the above assertions.

25 \_\_\_\_\_  
 26 <sup>2</sup> There may be other reasons for the 2017 bankruptcy being dismissed, which was done for lack of making  
 27 payments. Plaintiff would assert in an amended complaint that arrangements were made with the first mortgage  
 holder to stave off foreclosure, at least for a while. A different scenario would have presented itself, if there were a  
 confirmed Chapter 13 Plan that would have wiped out the fully underwater second mortgage on plan completion.

1           It is especially notable that Defendant (and its predecessors) have intentionally waived  
 2 their right to nearly half of the periodic payments on the second mortgage: (1) All payments due  
 3 from September 1, 2006 to March 1, 2015 are now barred by the statute of limitations, and (2) at  
 4 the minimum, all payments through March 1, 2021 are barred by failure to file a compulsory  
 5 counterclaim under Rule 13(a)(a) F.R.Civ.P. for at least the matured past due installment  
 6 payments on the loan. Plaintiff would argue that Defendant's waiver extends to the entire loan.

7           There was total silence from Defendant (and its predecessors) for at least 12 years, with  
 8 no communications or even requests to pay anything on the loan, despite federal and state laws  
 9 clearly requiring monthly servicing statements. In addition to absolutely barring collection of a  
 10 major portion of loan installments by the statute of limitations, Plaintiff would argue that a trier  
 11 of fact could conclude under appropriate facts a waiver of ALL rights to collect under the loan.

12           Just as argued under laches, RCW 7.28.010 generally covers all quiet title actions,  
 13 Defendant is currently asking to collect and threatening to foreclose, there is no requirement of  
 14 "ripeness", this matter is "ripe" if that is required, and any prematurity does not bar future claim.

15           **Fair Debt Collection Practices Act Claim is Valid**

16           As a preliminary matter, Plaintiff's state court complaint does not go into many factual  
 17 and legal detail about why Defendant is a "debt collector" under the Fair Debt Collection  
 18 Practices Act. Any deficiencies in this arena will be addressed through an amended complaint.

19           In general, Plaintiff believes that a principal purpose of Defendant's business is the  
 20 collection of debts. Plaintiff also believes that Defendant is collecting for the benefit of persons  
 21 other than itself. While the August 2015 letter in dkt. 24-2 was never sent to Plaintiff, it shows  
 22 the true owner of the mortgage loan to be Dreambuilder Investments LLC. Dreambuilder never  
 23 acquired a Washington collection agency license required to purchase delinquent debt, and  
 24 therefore transferred nominal ownership to Defendant, who does have a Washington license.  
 25 Plaintiff believes beneficial interest belongs to Dreambuilder or another "investor". Moreover,  
 26 Defendant has admitted to being a "debt collector" under the FDCPA in its correspondence to  
 27 Plaintiff. (Exhibit 1, October 26, 2020 letter; Exhibit 3, August 8, 2020 letter)

1           Defendant misquotes 15 USC 1692a(6), the statutory definition of “debt collector” on  
 2 Page 12, Lines 2-3 of its Motion to Dismiss. The actual “debt collector” definition in 15 USC  
 3 1692a(6) is: ***The term “debt collector” means any person who uses any instrumentality of  
 4 interstate commerce or the mails [A] in any business the principal purpose of which is the  
 5 collection of any debts, or [B] who regularly collects or attempts to collect, directly or  
 6 indirectly, debts owed or due or asserted to be owed or due another.*** (brackets added)

7           Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718, 1724 (2017) addressed a very  
 8 limited application of the FDCPA – whether an entity that ONLY tried to collect delinquent debt  
 9 it had purchased for its own account – and nothing more – could qualify as a “debt collector”  
 10 under the second alternative part of the 15 USC 1692a(6) definition, i.e. “who regularly collects  
 11 or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due  
 12 another”. And Henson held that an entity who only tried to collect debt that it had purchased for  
 13 itself, and did nothing else whatsoever, did not qualify as a FDCPA “debt collector”. *Id.*

14           By contrast, Henson held that someone collecting debt, even nominally under their own  
 15 name, whose true beneficial interest belonged to another creditor, was a “debt collector”. 136  
 16 S.Ct. at 1723. And Henson did not address the first alternative test of 15 USC 1692a(6), i.e. an  
 17 entity ***“in any business the principal purpose of which is the collection of any debts”***, or  
 18 whether an entity regularly collecting debt owed to others is covered as a “debt collector” when  
 19 they are attempting to collect debt that they have truly purchased for their own account:

20           Before attending to that job, though, we pause to note two related questions we do  
 21 not attempt to answer today. First, petitioners suggest that Santander can qualify as  
 22 a debt collector not only because it regularly seeks to collect for its own account  
 23 debts that it has purchased, but also because it regularly acts as a third party  
 24 collection agent for debts owed to others. Petitioners did not, however, raise the  
 25 latter theory in their petition for certiorari and neither did we agree to review it.  
 Second, the parties briefly allude to another statutory definition of the term “debt  
 collector” --one that encompasses those engaged “in any business the principal  
 purpose of which is the collection of any debts.” § 1692a(6). But the parties  
 haven’t much litigated that alternative definition and in granting certiorari we  
 didn’t agree to address it either.

26           Henson, 136 S.Ct. at 1721. Not surprisingly, Defendant’s briefing is totally devoid of any  
 27 analysis of these other alternatives – all of which are (or will be) expressly pleaded by Plaintiff.

1           What other legal analysis Defendant offers is completely irrelevant to the FDCPA issues  
 2 presented in this lawsuit. Niborg v. CitiMortgage, Inc., No. C17-5155 BHS, 2017 U.S. Dist.  
 3 LEXIS 110657, at \*6 (W.D. Wash. July 17, 2017) Kislyanka v. Clear Recon Corp., No.  
 4 C19-0673RSL, 2019 U.S. Dist. LEXIS 171238, at \*9 (W.D. Wash. Oct. 1, 2019) are both  
 5 mortgage foreclosure cases – Niborg doesn’t appear to involve the FDCPA at all and Kislyanka  
 6 holds that mortgage foreclosure by a trustee does not generally implicate the FDCPA.

7           In the present case, Plaintiff contends that Defendant is covered as a “debt collector”  
 8 under 15 USC 1692a(6) by several alternative bases, each of which is independently valid under  
 9 Henson: (1) the true beneficial owner of the mortgage loan is Dreambuilder or another investor  
 10 client of Defendant, (2) even if Defendant is now the true owner, Defendant only bought the debt  
 11 after it started collecting it, (3) even if Defendant is the true owner, Defendant regularly collects  
 12 debts for others, (4) the principal purpose of Defendant’s business is the collection of debts,  
 13 and/or (5) Defendant has expressly admitted that it is a “debt collector”.

14           Notably, the Ninth Circuit has joined other circuits in expressly limiting Henson to the  
 15 very narrow set of facts considered on the certiorari petition. In McAdory v. M.N.S. & Assocs.,  
 16 LLC, 952 F.3d 1089, 1095 (9<sup>th</sup> Cir. 2020), the Ninth Circuit held an entity whose principal  
 17 business is collecting debts is covered as a “debt collector” under the first prong of 15 USC  
 18 1692a(6), even if it is only collecting debts it purchased for itself. *See also Barbato v. Greystone*  
 19 All., LLC, 916 F.3d 260, 261 (3d Cir. 2019), *cert. denied* 140 S.Ct. 245, 205 L.Ed.2d 129 (2019).

20           Incredibly, Defendant argues that it wasn’t really trying to collect the debt from Plaintiff!  
 21 Such an absurd defense, at best, is a matter to raise at trial or perhaps a Rule 56 motion, but not  
 22 on a Rule 12(c) motion. Certainly, actual facts COULD support the proposition that Defendant  
 23 would really like Plaintiff to pay the debt. The actual letters sent by Defendant certainly appear  
 24 to ask Plaintiff to pay, and expressly state “THIS IS AN ATTEMPT TO COLLECT A DEBT”.  
 25 (Exhibits 1, 2, 3) Plaintiff has allegedly that Defendant was trying to collect the debt, which is  
 26 more than sufficient to withstand Rule 12(c). How could Defendant even stay in business, if it  
 27 didn’t try to get its alleged debtors to pay up? It would be NICE if Defendant wanted nothing!

1                   Defendant's citation of supposed supporting case law on Page 16, Lines 16-24 is not even  
 2 comprehensible. All four alleged authorities – Lucero v. Cenlar FSB; Gilchrist v. Bayview Loan  
 3 Servicing, LLC; Vien-Phuong Thi Ho v. Recontrust Co.,; Barnes v. Routh Crabtree Olsen PC –  
 4 either do not address the FDCPA at all, or only deal with actions of a foreclosure trustee.

5                   Defendant does not further ch the legal sufficiency of Plaintiff's FDCPA claim.

6 **Collection Agency Act Claims Valid Under Law Effective 2013 (before 2020 amendments)**

7                   Defendant attempts to mislead the Court by incorrectly citing to 2020 amendments to the  
 8 Collection Agency Act, Chapter 19.16 RCW, which do not apply at all to this proceeding. RCW  
 9 19.16.100 was last amended by Laws 2020, c 30 § 1, SHB 2476 (Exhibit 4), effective June 11,  
 10 2020. The 2020 amendments only apply to junk debt purchased after June 11, 2020, Laws 2020,  
 11 c 30 § 5, and offer additional protections to alleged debtors against actions of junk debt buyers.

12                   Plaintiff's lawsuit, of course, is based on Washington law which protects alleged debtor  
 13 against the actions of junk debt buyers (and other "collection agencies") who purchased such  
 14 debts prior to June 11, 2020. Those debtors are protected just the same as persons pursued by  
 15 other "collection agencies" and have been so protected since October 1, 2013. Exhibit 5 is a  
 16 copy of RCW 19.16.100 (2019), showing the law before the 2020 amendments.

17                   These protectors against delinquent debt buyers were added Laws 2013, Chapter 148,  
 18 Section 1, SHB 1822 (Exhibit 6), which became effective on October 1, 2013 and are found at  
 19 RCW 19.16.100 (2019). Under RCW 19.16.110(4)(d) (2019), "any person or entity that is  
 20 engaged in the business of purchasing delinquent or charged off claims for collection purposes,  
 21 whether it collects the claims itself or hires a third party for collection or an attorney for  
 22 litigation in order to collect such claims" must have a collection agency license.

23                   If there are any doubts about the Washington Legislature's intentions in adopting Laws  
 24 2020, c 30 § 1, Final Bill Report for SHB 2476 (2020) (Exhibit 7) states under pre-existing law

25                   The term collection agency is defined to encompass several categories of persons  
 26 and entities, *including any person or entity that is engaged in the business of*  
*purchasing delinquent or charged off claims for collection purposes*, whether it  
 27 collects the claims itself or hires a third party for collection or an attorney for  
 litigation in order to collect such claims.

1           Defendant's attempt to attack the legal sufficiency of Plaintiff's Collection Agency Act  
 2 claims utterly fails, since it is based solely on interpreting 2020 amendments which do not apply.  
 3 Very clearly, Defendant is covered as a "collection agency" under RCW 19.16.110(4)(d) (2019).

4           Defendant makes a disingenuous argument that it is somehow exempted from coverage of  
 5 the Collection Agency Act by RCW 19.16.100(5)(c). However, this exemption only applies to a  
 6 "business other than that of a collection agency". And as we have seen, Defendant was a  
 7 "collection agency" under the express provisions of RCW 19.16.110(4)(d) (2019), even if the  
 8 mortgage debt at issue was purchased solely for Defendant's own benefit, instead of collecting  
 9 for others. Moreover, Defendant has the temerity to offer a reference to its own self-serving  
 10 website – which is not proper evidence on a Rule 12(c) or even a Rule 56 motion. Notably,  
 11 Defendant expressly admits its business is buying non-performing (i.e. delinquent) loans!

12           Defendant further misrepresents that Plaintiff pleaded "there is no record of Trinity  
 13 collecting debts against debtors in this state". This is FALSE! Plaintiff only alleges that  
 14 Defendant has never foreclosed on a mortgage in Washington, but clearly states Defendant is  
 15 trying to collect payments. If only Defendant conceded that it wanted no money from Plaintiff!

16           Defendant does not further challenge the legal sufficiency of Plaintiff's Collection Agency  
 17 Act claims. Plaintiff has alleged numerous actions in violation of RCW 19.16.110 and/or RCW  
 18 19.16.250 in Paragraphs 23-32, 45-52 and elsewhere. Under RCW 19.16.440, any violation of  
 19 RCW 19.16.110 or RCW 19.16.250 is automatically a violation of the Consumer Protection Act,  
 20 Chapter 19.86 RCW. Under RCW 19.16.450, any violation of RCW 19.16.250 forever forfeits  
 21 all right to recover interest, late fees, attorney fees, court costs, or any other amount other than  
 22 actual principal. Plaintiff has also alleged that Defendant obtaining an out-of-state collection  
 23 agency license under RCW 19.16.100(12) prohibits in-state collection activities, such as filing  
 24 lawsuits or having foreclosure sales, and thereby merits quieting title. All these must survive.

25           **Real Estate Settlement Procedures ("RESPA") -- 12 U.S.C. § 2605(b)**

26           Defendant's sole legal challenge to Plaintiff's RESPA claim under 12 U.S.C. § 2605(b) is  
 27 asserting that it sent Plaintiff the purported August 13, 2015 letter proffered at dkt. 24-2.

1 Plaintiff has expressly objected to consideration of this letter, disputing its veracity and  
 2 believing it to be a recent fabrication. Plaintiff has also logically argued that neither Defendant  
 3 nor Dreambuilder Investments LLC had the Consumer Loan License required by RCW  
 4 31.04.035(1) to service residential mortgage loans at the time, which would make it illogical for  
 5 them to send a letter admitting to doing such a criminal act, especially when they had totally kept  
 6 silent about the loan since at least 2008. This material is not proper under Rule 12(c) F.R.Civ.P.

7 Since Plaintiff has validly pleaded that Defendant failed to notify him of the loan  
 8 servicing transfer (whenever it might have been), this states a valid 12 U.S.C. § 2605(b) claim.

9 **Mortgage Loan Servicing Act – Chapter 19.148 RCW**

10 Plaintiff concedes that the mortgage loan at issue was not a purchase money mortgage,  
 11 and therefore his claim under Chapter 19.148 RCW should be dismissed or withdrawn.

12 **Periodic Billing Statements -- 15 U.S.C. § 1638(f)**

13 The Truth In Lending Act one year statute of limitations under 15 U.S.C. § 1640(e)  
 14 applies only to Plaintiff recovering affirmative monetary damages. Regardless of the passage of  
 15 time, Plaintiff can use these (more than year old) violations as a set-off against a lawsuit by  
 16 Defendant on the loan (this compulsory counterclaim under Rule 13(a)(1) has not been brought,  
 17 and must be to avoid loss of all rights under res judicata) under 15 U.S.C. § 1640(e), or as a set-  
 18 off against foreclosure under 15 U.S.C. § 1640(k). To the extent that otherwise time-barred  
 19 violations are not ripe to raise in this lawsuit, they will be in the future if there is enforcement.  
 20 Plaintiff may recover money damages for all violations after August 2, 2019 initiation date.

21 Under 15 U.S.C. § 1638(f), Defendant was required to send Plaintiff a periodic billing  
 22 statement each month, setting forth numerous items, including (A) The amount of the principal  
 23 obligation, (B) The current interest rate in effect, (C) The date on which the interest rate may  
 24 next reset or adjust, (D) The amount of any prepayment fee to be charged, if any, (E) A  
 25 description of any late payment fees, (F) A telephone number and electronic mail address to  
 26 obtain information, (G) Information on counseling agencies or programs reasonably available to  
 27 the consumer and (H) Such other information as the may be prescribed in regulations.

1           Defendant misstates the law as to damages available for violation of 15 U.S.C. § 1638(f).  
 2   Actual damages under 15 U.S.C. § 1640(a)(1) is only one element of available damages. In  
 3   addition, for EACH violation of 15 U.S.C. § 1638(f), statutory damages “relating to a credit  
 4   transaction not under an open end credit plan that is secured by real property or a dwelling, not  
 5   less than \$400 or greater than \$4,000” must be added under 15 U.S.C. § 1640(a)(2)(a)(iv).  
 6   Actual damages are an issue for trial, but substantial statutory damages are always mandated.

7           Defendant alleges that 15 U.S.C. § 1638(f) did not apply, because it “was not enforcing  
 8   payments in the year prior to case filing”. Motion, p. 14:23-24. That is NOT the legal standard.

9           There is a regulatory-made exception for “charged-off” loans created under 12 CFR §  
 10 1026.41(e)(6). This exception has not been pleaded in Defendant’s Answer, much less briefed in  
 11 Defendant’s motion to dismiss. This exception has made very specific requirements – such as  
 12 actually telling the debtor the loan has been charged off and not charging any further interest or  
 13 fees.<sup>3</sup> None of these conditions even appear to be met – and even if Defendant were to belatedly  
 14 argue that they were met, all these issues are disputed and not available on a Rule 12(c) motion.

15           Defendant’s citation to Adrain v. Wells Fargo Bank, N.A. is ludicrous. Adrain deals with  
 16 allegations of bad faith foreclosure mediation practices, not with periodic billing statements.

17           Defendant raises no other challenges to legal sufficiency of the 15 U.S.C. § 1638(f) claim.

18           **Failure to Disclose Transfer of Loan Ownership – 15 U.S.C. § 1641(g)**

19           Under 15 U.S.C. § 1641(g), Defendant was required to notify Plaintiff of the ownership  
 20 transfer on the second position deed of trust not later than 30 days after the transfer of  
 21 ownership. Facial ownership (unclear who has beneficial ownership) of the second position  
 22 deed of trust was transferred to Defendant on August 1, 2016 and Defendant did not notify  
 23 Plaintiff of this until April 8, 2020. Defendant does not challenge the legal sufficiency of this  
 24 claim (no magical “notice” offered up at this time), but alleges the statute of limitations.

25           <sup>3</sup> Plaintiff has never been told by anyone that the loan was “charged off”. Nor has Defendant ever claimed  
 26 to have done so. None of the correspondence by Defendant (Exhibits 1, 2, 3) claims there was any “charge off”.  
 27 Instead, the 11/12/2020 letter by Defendant’s counsel (Exhibit 2) indicates that \$37,186.48 interest and \$1,593.84  
 late charges are owed, and that these are increasing on a daily basis – the exact opposite of a “charge off”. Despite  
 all this, Defendant still refuses to provide Plaintiff with the monthly statements required by 15 U.S.C. § 1638(f).

1           Defendant evidently concedes that a 15 U.S.C. § 1641(g) can be excepted from the  
 2 statute of limitations by the discovery rule. After all, if ownership of a home mortgage is  
 3 transferred to another creditor, there would normally be no way that a homeowner would  
 4 actually find out – unless the servicer told the homeowner. This is the very reason that Congress  
 5 enacted 15 U.S.C. § 1641(g). To not allow discovery rule exception for this would simply  
 6 encourage creditors to never inform the homeowner, and hope they don't find out within a year.

7           Defendant instead believes courts should expect homeowners to constantly log in to the  
 8 county website (or travel to the county seat, in less computer savvy counties, or those with very  
 9 restricted website privacy rules like California) to see if their mortgage has been transferred to  
 10 someone else. Enacting such a “constructive notice” requirement would totally vitiate the  
 11 purposes of 15 U.S.C. § 1641(g), which affirmatively require lenders to make such disclosures.  
 12 And of course, Pearse v. First Horizon Home Loan Corp., cited by Defendant, has absolutely  
 13 nothing to do with 15 U.S.C. § 1641(g), but a novel claim of “securitization” concealment.  
 14 Perhaps people worried about “securitization” might be well advised to regularly visit the county  
 15 courthouse, but ordinary folks should rely on lenders to disclose under 15 U.S.C. § 1641(g).

16           In the event the discovery rule did not apply, Plaintiff's 15 U.S.C. § 1641(g) claim can  
 17 still be used as a set-off at an appropriate time (perhaps) now, as per previous section argument.

18           **Consumer Protection Act Claim – Chapter 19.86 RCW**

19           The purpose of the Washington Consumer Protection Act (CPA), Chapter 19.86 RCW, is  
 20 “to complement the body of federal law governing restraints of trade, unfair competition and  
 21 unfair, deceptive and fraudulent acts or practices in order to protect the public and foster fair and  
 22 honest competition.” RCW 19.86.920. Individuals injured in their business or property by  
 23 C.P.A. violations may bring suit to recover damages from the wrongdoer. RCW 19.86.090. To  
 24 prevail in a C.P.A. action, a plaintiff must prove (1) unfair or deceptive act or practice (2)  
 25 occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff in business or  
 26 property and (5) causation of the injuries by acts complained of. Hangman Ridge Training v.  
 27 Safeco Title Ins., 105 Wn.2d 778, 780, 719 P.2d 531, 533 (1986).

1           The existence of an unfair or deceptive act or practice occurring in trade or commerce  
 2 can be established by showing either that: (1) the act or practice violates a statute which has  
 3 been declared by the legislature to constitute an unfair or deceptive act in trade or commerce (per  
 4 se unfair trade practice) or (2) the act or practice has the capacity to deceive a substantial portion  
 5 of the public and occurs in the conduct of any trade or commerce (de facto deceptive trade  
 6 practice). Hangman Ridge, 719 P.2d at 535.

7           Plaintiff's First Cause of Action (Complaint, ¶¶ 41-65) is for a "per se unfair trade  
 8 practice" violation related to the Collection Agency Act. While Defendant made an unavailing  
 9 challenge that it is somehow not a "collection agency", Defendant has not challenged the legal  
 10 sufficiency of any of Plaintiff's claims that RCW 19.86.110 and/or RCW 19.86.250 were  
 11 violated. (Complaint, ¶¶ 45-49) Under 19.16.440, such violations of RCW 19.86.110 and/or  
 12 RCW 19.86.250 are per se "declared to be unfair acts or practices or unfair methods of  
 13 competition in the conduct of trade or commerce". This legal sufficiency is not disputed.

14           Plaintiff's Second Cause of Action (Complaint, ¶¶ 66-85) is for a "de facto deceptive  
 15 trade practice" violation of the Consumer Protection Act. Plaintiff specifically alleged that:

16           68.    Defendant's failure to notify Plaintiff and other homeowners of the  
 17 loan servicing transfer on the second position deed of trust at least 15 days before  
 18 the transfer of servicing and in no event more than 30 days after transfer of  
 19 servicing, as required by 12 U.S.C. § 2605(b), or at least 30 days prior to the next  
 20 payment due date as required by RCW 19.148.030(2), and instead making such  
 21 notification on April 8, 2020, over 3-1/2 years after the transfer on August 1, 2016,  
 22 was deceptive and unfair.

23           69.    Defendant's failure to notify Plaintiff and other homeowners of the  
 24 ownership transfer on the second position deed of trust within 30 days of  
 25 ownership transfer, as required by 15 U.S.C. § 1641(g), and instead making such  
 26 notification on April 8, 2020, over 3-1/2 years after the transfer on August 1, 2016,  
 27 was deceptive and unfair.

28           70.    Defendant's failure to provide Plaintiff with a periodic billing  
 29 statement prior to each monthly payment due date, as required by 15 U.S.C. §  
 30 1638(f), was deceptive and unfair.

31           71.    Defendant's false representation that its second position deed of  
 32 trust constituted a valid security interest against Plaintiff's residence which could  
 33 be enforced by foreclosure or by lawsuit including personal liability, when such  
 34 action could not legally be taken due to Defendant only possessing an Out-of-State  
 35 Collection Agency License which does not allow taking in-state actions such as

1 lawsuits and foreclosure sales, and when enforcement being barred by the statute  
 2 of limitations, as well as due to laches and waiver, was deceptive and unfair.  
 3

4 72. Defendant's attempt to obtain confidential personal and financial  
 5 information for Plaintiff, including social security number, income information,  
 6 asset information, liability information, and other personal information, as well as  
 7 a general expense to allow all third parties to disclose information about Plaintiff,  
 8 when such action could not legally be taken due to Defendant only possessing an  
 9 Out-of-State Collection Agency License which does not allow taking in-state  
 10 actions such as lawsuits and foreclosure sales, and also due to enforcement being  
 11 barred by the statute of limitations, as well as due to laches and waiver, was  
 12 deceptive and unfair.  
 13

14 73. Defendant's other violations of the Collection Agency Act and  
 15 other applicable state and federal laws was deceptive and unfair.  
 16

17 Plaintiff obviously asserts that each and every one of the sets of allegations are  
 18 "deceptive and unfair" acts or practice y Defendant, and thereby in violation of RCW 19.86.020.  
 19 Defendant offers absolutely no argument to the contrary in its Rule 12(c) motion. Not once does  
 20 Defendant argue that it is factually implausible for Plaintiff to prove any of the six groups of  
 21 allegations, nor does Defendant argue that any of these six groups of allegations, if proven true,  
 22 would somehow not constitute an unfair or deceptive act or practice against the Plaintiff.  
 23

24 Instead, Defendant merely offers the short conclusory argument that they were merely  
 25 "stand[ing] by their contracts rights". Nowhere does Defendant bother to explain how they  
 26 spmehow have the "contracts rights" to do any of the things Plaintiff alleges in Paragraphs 68-73  
 27 of his complaint. And quite obviously, Plaintiff isn't suing Defendant over anything that there is  
 28 any sort of "contracts rights" to do – but instead over specified "deceptive and unfair acts".

29 Consistently with most other states, Washington requires a private CPA plaintiff to  
 30 establish the deceptive act caused injury. Hangman Ridge, 105 Wn.2d at 794, 719 P.2d 531; Bob  
 31 Cohen, Annotation, Right to Private Action under State Consumer Protection Act-Preconditions  
 32 to Action, 117 A.L.R.5th 155 (2004) (discussing injury requirement as precondition to private  
 33 right of action under state consumer protection act; collecting cases). The injury requirement is  
 34 met upon proof the plaintiff's " property interest or money is diminished because of the unlawful  
 35 conduct even if the expenses caused by the statutory violation are minimal." Mason v. Mortgage  
 36 Am., Inc., 114 Wn.2d 842, 854, 792 P.2d 142 (1990) (temporary loss of use of property while  
 37

1 brokerage company improperly withheld title constituted sufficient injury to support attorney fee  
 2 award under the CPA) (*citing Hangman Ridge*, 105 Wn.2d at 792, 719 P.2d 531). Pecuniary  
 3 losses occasioned by inconvenience may be recoverable as actual damages. *Keyes*, 31 Wn. App.  
 4 at 296, 640 P.2d 1077; *Tallmadge v. Aurora Chrysler Plymouth, Inc.*, 25 Wn. App. 90, 605 P.2d  
 5 1275 (1979) (costs associated with traveling to dealership in reliance on false advertisements).

6 "Injury" is distinct from " damages." *Nordstrom*, 107 Wn.2d at 740, 733 P.2d 208.

7 Monetary damages need not be proved; unquantifiable damages may suffice. *Id.* (loss of  
 8 goodwill); *Nw. Airlines, Inc. v. Ticket Exch., Inc.*, 793 F.Supp. 976 (W.D.Wash., 1992) (proof  
 9 of injury satisfied by " stowaway theory" where damages are otherwise unquantifiable in case  
 10 involving deceptive brokerage of frequent flier miles); *Fisons*, 122 Wn.2d 299, 858 P.2d 1054  
 11 (damage to professional reputation); *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 298, 38  
 12 P.3d 1024 (2002) (injury by delay in refund of money); *Webb v. Ray*, 38 Wn. App. 675, 688  
 13 P.2d 534 (1984) (loss of use of property).

14 In the present case, Plaintiff had to consult "with an attorney to dispel uncertainty  
 15 regarding the nature of [the] alleged debt" claimed by Defendant, and such pre-litigation attorney  
 16 fees to determine the consequences of unfair and deceptive practices are specifically allowed  
 17 under *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 63, 204 P.3d 885 (2009) as the  
 18 type of injury to "business or property" that will support a CPA claim under RCW 19.86.090.

19 In addition, Defendant's violations of RCW 19.16.250 (Collection Agency Act) require  
 20 Defendant to forfeit "interest, service charge, attorneys' fees, collection costs, delinquency  
 21 charge, or any other fees or charges" under RCW 19.16.450 and collect only unpaid principal.  
 22 These amounts are substantial and certainly constitute a sufficient "injury to property".

23 Plaintiff has also alleged that he paid out nearly \$56,000.00 in conjunction with his 2017  
 24 Chapter 13 bankruptcy case (Complaint, ¶16) that he would not have paid out had Defendant not  
 25 unfairly and deceptively concealed the existence of its loan by illegally failing to communicate at  
 26 all with Plaintiff (as it and its predecessors in interest had failed to do since 2008). This is a very  
 27 substantial loss of "property" alleged by Plaintiff as the result of this unfairness and deception.

1           Last but not least, Plaintiff has alleged a pecuniary loss of \$25,000.00 due to “loss of  
 2 current opportunities to sell property”. (dkt. 1-2 at p. 2) This is also an injury to “property”.

3           Defendant does not otherwise challenge the legal sufficiency of Plaintiff’s CPA claim.

4           **Defendant is Not Entitled to Attorney Fees**

5           Defendant’s motion to dismiss should be denied. This makes any attorney fees premature.

6           Plaintiff’s FDCPA claim should not be dismissed, and in any event is not in bad faith.

7           Defendant even admits in its letters to being a “debt collector”. (Exhibits 1, 3) Plaintiff argues  
 8 the “debt collector” issue in good faith, and Defendant does not otherwise dispute FDCPA claim.  
 9 Plaintiff’s August 5, 2020 attempt to settle before filing (dkt. 1-2) was certainly not in bad faith –  
 10 nor did Defendant challenge any of Plaintiff’s claims before Defendant decided to file this suit.

11           Notably, Plaintiff is seeking only \$1,000.00 statutory damages on the FDCPA claim (dkt. 1-2 at  
 12 p. 2), with all other damages in common with other causes of action. FDCPA is not “bad faith”.

13           There are many reasons why Defendant would not be contractually entitled to attorney  
 14 fees, even if Plaintiff’s claims were dismissed. First, RCW 19.16.450 would specifically bar  
 15 attorney fees if Defendant is a “collection agency” under RCW 19.16.100(4)(d) (2019), given the  
 16 Defendant does not deny the RCW 19.16.250 violations set forth at Complaint, ¶¶ 46-49.

17           Second, the Deed of Trust (dkt. 24-1) attorney fee rights of Plaintiff are very limited.  
 18 Paragraph 17 only deals with attorney fees if Defendant starts a foreclosure – and this lawsuit is  
 19 not a foreclosure action (or counterclaim). Paragraph 7 only deals with a lawsuit claim which  
 20 “materially affects Lender’s interest in the Property”. This, at best, would cover only the quiet  
 21 title aspects, and not Plaintiff’s claims for damages for other bases. Paragraph 7 also provides  
 22 any such attorney fees “shall become additional indebtedness of Borrower secured by this Deed  
 23 of Trust”. This provision, if Plaintiff loses, would simply increase the debt owed under the Deed  
 24 of Trust (if not otherwise barred by res judicata due to lack of compulsory counterclaim), unless  
 25 Defendant were to amend its lawsuit to add a counterclaim for payment of the promissory note.

26           **Conclusion**

27           For all the reasons stated above, Defendant’s motion to dismiss should be denied.

1 Respectfully submitted this 8<sup>th</sup> day of March 2021.  
2  
3  
4  
5

*/s/ Richard L. Pope, Jr.*  
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9

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15 E-Mail: [rp98007@gmail.com](mailto:rp98007@gmail.com)

16 **Proof of Service**

17 I certify that, on March 8, 2021, I electronically filed the foregoing with the Clerk of the  
18 Court using the CM/ECF system which will send notification of such filing to the following  
19 registered with CM/ECF, including the Honorable James L. Robart, and all counsel of record for  
20 the other parties to this case, including the following people listed on the system:  
21

22 **Joseph W. McIntosh [jmcintosh@mccarthyholthus.com](mailto:jmcintosh@mccarthyholthus.com)**

23 **Richard Lamar Pope , Jr [rp98007@gmail.com](mailto:rp98007@gmail.com)**

24 Signed at Bellevue, Washington this 8<sup>th</sup> day of March 2021.  
25  
26  
27  
28

*/s/ Richard L. Pope, Jr.*  
29 RICHARD L. POPE, JR.

# EXHIBIT 1



October 26, 2020

Via Certified Mail

RICHARD DWYER  
25322 113TH AVE SE  
KENT, WA 98030

## MORTGAGE ASSISTANCE APPLICATION

Dear RICHARD DWYER:

This letter is in response to your recent inquiry regarding a temporary payment plan, short sale, or settlement agreement regarding the above referenced loan. Please complete this entire package with supporting documentation and forward it to Trinity Financial Services, LLC.

**DO NOT send an incomplete package, or your request will not be considered.  
No package will be processed until ALL items requested herein are received.**

The documentation you provide will be reviewed and verified. The information obtained will help in assessing your financial situation. Please be advised that submission of this information is not a guarantee that a payment plan or short sale of any kind will be approved.

**Please send this completed package via:**

**Email:**

LNP@trinityfs.com

OR

**Overnight address:**

Trinity Financial Services, LLC  
2618 San Miguel Drive, Ste 303  
Newport Beach, CA 92660

OR

**Fax:**

(805) 516-2608

**THIS IS AN ATTEMPT TO COLLECT A DEBT. THIS COMMUNICATION IS FROM A DEBT COLLECTOR. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. You have a right to dispute this debt, in part or in full, with Trinity Financial Services, LLC within 30 days. If Trinity Financial Services, LLC does not receive a response from you within 30 days, the debt will be assumed VALID.**

**Toll Free: 855.818.6806 | Fax: 805.516.2608 | 2618 San Miguel Dr., Suite 303 Newport Beach, CA. 92660**



**THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

**NOTICE TO DEBTOR(S) IN BANKRUPTCY:** This paragraph is a special notice to our customers who have filed a petition for protection under the United States Bankruptcy Code. Unless you have signed a reaffirmation agreement with the lender, and that agreement has been filed with the bankruptcy court (and not subsequently rescinded or disallowed in accordance with the Bankruptcy Code), you should disregard all portions of this letter which state or suggest that you still have a personal liability to pay the lender. You may wish to consult with an attorney regarding this letter, your bankruptcy and the ability of the lender to enforce its lien on collateral, if any. If you have obtained a discharge under the Bankruptcy Code this letter is for informational purposes or to protect our interests in any collateral.



**EXHIBIT B**  
**Borrower's Statement of Attorney Representation**

Currently, a lawsuit has not been filed in your state regarding this issue. Please contact your attorney immediately. If this matter is not resolved, Trinity Financial Services, LLC will pursue this matter by any legal means necessary, including but not limited to, possible foreclosure of the property specified in the mortgage/deed of trust or possible initiation of a lawsuit for personal liability of your debt to Trinity Financial Services, LLC.

You are not required to be represented by an attorney but it is HIGHLY recommended. If you are not represented by an attorney but wish to be, you may contact the American Bar Association for a referral to an attorney in your state. The link to the American Bar Association's referral website is [www.FindLegalHelp.org](http://www.FindLegalHelp.org).

- I am currently not represented by an attorney. I have been advised that legal representation is recommended but not required. Please contact me directly regarding the negotiation of this loan. I reserve the right to retain an attorney at a future date.
- I am currently not represented by an attorney, but I am in the process of obtaining an attorney. I have contacted the American Bar Association and/or have used an attorney referral service. Until an attorney has contacted Trinity Financial Services, LLC please contact me directly.
- I am currently represented by an attorney. Their contact information is as follows:

Firm Name: \_\_\_\_\_

Attorney Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

---

Borrower Signature

---

Printed Name

---

Date

# EXHIBIT 2



**WRIGHT FINLAY & ZAK<sup>LLP</sup>**  
ATTORNEYS AT LAW

Main Office  
4665 MacArthur Court, Suite 200  
Newport Beach, CA 92660  
Main Phone: (949) 477-5050  
Email Fax: (949) 608-9142

[www.wrightlegal.net](http://www.wrightlegal.net)

Sent Via First Class and Certified Mail

Direct Dial: 949-610-7017

November 12, 2020

Richard T. Dwyer  
25322 113th Ave SE  
Kent, WA 98030

Re: Case Name : Dwyer, Richard T.  
Property Address : 25322 113th Ave SE, Kent, Washington, 98030  
Client Reference No. : 1500022022  
WFZ Case No. : 315-2020179

**RE: NOTICE OF DEFAULT**

PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692e(11), PLEASE BE ADVISED THAT THE UNDERSIGNED FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Dear Mr. Dwyer:

This law firm represents Trinity Financial Services, LLC (hereinafter the "Beneficiary"), the current beneficiary of a promissory note secured by a deed of trust (collectively referred to as the "Loan"), which encumbers real property located at 25322 113th Ave SE, Kent, Washington, 98030 (the "Property").

The nonpayment of principal and interest on the Loan, including your failure to pay the May 2015 installment and sums due and owing thereafter, is a breach of the Loan terms. Please be advised that as of 12/12/2020, the reinstatement amount required to cure the breach is \$39,096.01.

Because interest and other charges may vary from day to day, the amount due on the day paid may be different. Hence, if payment in the reinstatement amount shown above is submitted, an adjustment may be necessary after the receipt of the payment. If this sum is submitted, please also immediately contact the beneficiary at (855) 818-6806 so they can promptly discuss other amounts remaining due, if applicable.

Nevada Office  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Main Phone: (702) 475-7964  
Main Fax: (702) 946-1345

Arizona Office  
2800 N. Central Ave., Suite 1217  
Phoenix, AZ 85004  
Main Phone: (949) 477-5050

Washington Office  
612 South Lucile, Suite 300  
Seattle, WA 98108  
Main Phone: (425) 296-3116

Utah Office  
2975 W. Executive Pkwy, Suite 233  
Mailbox 155  
Lehi, UT 84043  
Main Phone: (801) 893-4901  
Main Fax (702) 946-1345

Oregon Office  
121 SW Morrison, Suite 1100  
Portland, OR 97204  
Main Phone: (503) 479-8871  
Main Fax (949) 608-9142

Alternatively, to pay the entire sum secured by the Deed of Trust, the total loan payoff amount as of 12/12/2020 is \$91,303.85. This payoff amount includes:

Unpaid Principal Balance	\$52,396.20
Accrued Interest	\$37,186.48
Late Charges	<u>\$1,593.84</u>
<b>TOTAL</b>	<b>\$91,303.85</b>

Again, because interest and other charges may vary from day to day, the amount due after the date of this letter may be different.

To cure the breach, the following must occur:

1. Funds for the full reinstatement or payoff amount must be received at the address stated in the paragraph below no later than 5:00 p.m. PT on December 12, 2020.
2. Funds must be in the form of ONE cashier's check or money order (certified funds only) made payable to Trinity Financial Services, LLC for either: \$39,096.01 if reinstating the loan and curing the breach, OR \$91,303.85 if paying off the loan, and mailed to:

Trinity Financial Services, LLC  
2618 San Miguel Drive, Suite 303  
Newport Beach, CA 92660

3. No partial payments will be accepted.
4. Only cashier's checks or money orders will be accepted. No trust account, escrow, or personal checks will be accepted.

If funds are not submitted by the date listed above, the beneficiary can provide updated reinstatement and/or payoff quote accurate through a specific future date. Such request, however, does not affect the Beneficiary's rights as stated herein.

Should you tender either reinstatement or payoff funds after the date when your next monthly installment on the loan becomes due subsequent to this letter, please note such funds would not cover that monthly installment. Further payments in this circumstance must be made directly to the Beneficiary.

If the breach stated herein is not cured by December 12, 2020, the Beneficiary retains the right to pursue any remedies permitted by applicable law and/or the Deed of Trust, such as accelerating the loan and/or conducting a foreclosure of the Property at public auction.

**For potential assistance to remedy your default on the loan, you can contact the beneficiary at (855) 818-6806 to engage in a discussion concerning available options such as requesting a loan modification application.**

If you have filed bankruptcy, enforcement of the debt would not occur during pendency of the case or until relief from stay is granted. If you have received a discharge of the debt referenced herein in a bankruptcy proceeding, this letter is not an attempt to impose personal liability upon you for payment of

Nevada Office  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Main Phone: (702) 475-7964  
Main Fax: (702) 946-1345

Arizona Office  
16427 N. Scottsdale Road, Suite 300  
Scottsdale, AZ 85254  
Main Phone: (949) 477-5050

Washington Office  
3600 15<sup>th</sup> Ave W., Suite 202  
Seattle, WA 98119  
Main Phone: (425) 296-3116

Utah Office  
2975 W. Executive Pkwy, Suite 233  
Mailbox 155  
Lehi, UT 84043  
Main Phone: (801) 893-4901  
Main Fax (702) 946-1345

Oregon Office  
121 SW Morrison, Suite 1100  
Portland, OR 97204  
Main Phone: (503) 479-8871  
Main Fax (949) 608-9142

Page 3

that debt. In the event you have received a bankruptcy discharge, any action to enforce the debt will be taken against the Property only.

If, and to the extent that, the Beneficiary may in any way be deemed to have waived any of the time-essence provisions in documents evidencing and/or securing the loan, the Beneficiary hereby reinstates those provisions. By delivering the above quote(s), the Beneficiary does not waive its right to enforce any and all remedies afforded by law or the loan documents including, without limitation, its right to enforce due on sale provisions.

Please note that you have the right to bring a court action to assert the nonexistence of a breach or any other defense permitted by applicable law and/or the Deed of Trust. If you believe that any portion of this notice is in error, please notify our office as follows.

**THE FOLLOWING IS A NOTICE TO YOU AS A CONSUMER DEBTOR:**

As of the date of this notice, you owe the total amount stated on the first page herein to the creditor also named as the Beneficiary on the first page. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Please be advised that, because this letter is being sent to you in connection with a consumer debt, you may have certain rights under federal law. First, unless within thirty (30) days after receipt of this notice, you dispute the debt or any portion of it, we will assume the debt to be valid. Second, if you notify us in writing within thirty (30) days after receipt of this notice that you dispute the debt or any part of it, we will request that the creditor obtain verification of the debt and mail it to you. Third, if you request in writing within thirty (30) days after receipt of this notice, we will request that the creditor provide you with the name and address of the original creditor, if different from the current creditor. PLEASE BE ADVISED THAT LEGAL ACTION AND/OR FORECLOSURE PROCEEDINGS MAY BE COMMENCED AGAINST YOU DURING THE THIRTY (30) DAY PERIOD REFERRED TO IN THIS PARAGRAPH.

All written requests should be addressed to **Trinity Financial Services, LLC, 2618 San Miguel Drive, Suite 303, Newport Beach, CA 92660.**

Sincerely,

**WRIGHT, FINLAY & ZAK, LLP**



**Joyce Copeland Clark**  
**Director Default Operations**

Nevada Office  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Main Phone: (702) 475-7964  
Main Fax: (702) 946-1345

Arizona Office  
16427 N. Scottsdale Road, Suite 300  
Scottsdale, AZ 85254  
Main Phone: (949) 477-5050

Washington Office  
3600 15th Ave W., Suite 202  
Seattle, WA 98119  
Main Phone: (425) 296-3116

Utah Office  
2975 W. Executive Pkwy, Suite 233  
Mailbox 155  
Lehi, UT 84043  
Main Phone: (801) 893-4901  
Main Fax (702) 946-1345

Oregon Office  
121 SW Morrison, Suite 1100  
Portland, OR 97204  
Main Phone: (503) 479-8871  
Main Fax (949) 608-9142

# EXHIBIT 3



April 8, 2020

Via Priority Mail

RICHARD DWYER  
25322 113TH AVE SE  
KENT, WA 98030

RE: Account No.: 1500022022  
Property Address: 25322 113TH AVE SE, KENT, WA 98030  
Unpaid Principal Balance: \$52,396.20

Dear RICHARD DWYER:

We have reviewed your file and confirmed that your payments on the above-referenced Account are seriously past due.

Trinity Financial Services, LLC is owner and servicer for your account, and we understand that it can be difficult to get your financial matters back on track and that catching up on past mortgage payments can feel overwhelming. We also know that the COVID-19 virus has placed a strain on many homeowners.

We want to offer assistance to you, if you need help. Please find enclosed important information regarding the assistance you may be eligible for or simply call us at (855) 818-6806 to explore what assistance may be available to you.

To get started, please complete the enclosed Mortgage Assistance Application form and send it with the other required documents to us by any of the following methods:

Email to: LNP@trinityfs.com  
Overnight mail to: Trinity Financial Services, LLC  
2618 San Miguel Drive, Ste 303  
Newport Beach, CA 92660  
Fax to: (805) 516-2608

Further, please advise us of any recent hardship you may be experiencing due to the COVID-19 virus, so we might assess what other assistance might be available to you<sup>1</sup>.

By returning Mortgage Assistance Application form and the other required documents, we will be better able to conduct an individual assessment of your file for a possible loan modification or other accommodation to avoid foreclosure.

---

<sup>1</sup>Please note that those affected by COVID-19 may be eligible for specific hardship programs based on state.

If you need assistance filling out the Mortgage Assistance Application form or have questions about the required documents or your Account, please do not hesitate to contact us at (855)818-6806.

Please note that because of the age of your Account and the time that has passed since your last payment, it is possible that we cannot sue you to collect what you owe. We do, however, have a continuing and enforceable security interest in the Property described above. If you choose not to make payments or explore loan modification or other options with us, we may elect to enforce our security interest and foreclose on the Property.

Sincerely,

Loss Mitigation Department  
Trinity Financial Services, LLC

**THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

**NOTICE: If you are entitled to the protections of the United States Bankruptcy Code (11 U.S.C. §§ 362; 524) regarding the subject matter of this letter, the following applies to you: THIS COMMUNICATION IS NOT AN ATTEMPT TO COLLECT, ASSESS, OR RECOVER A CLAIM IN VIOLATION OF THE BANKRUPTCY CODE AND IS FOR INFORMATIONAL PURPOSES ONLY. You may wish to consult with an attorney regarding this letter, your bankruptcy and the ability of the lender to enforce its lien on collateral, if any. If you have obtained a discharge under the Bankruptcy Code, this letter is for informational purposes or to protect our interests in any collateral.**

## Mortgage Assistance Application

If you are having mortgage payment challenges, please complete and submit this application, along with the required documentation, to us (Trinity Financial Services, LLC) by one of the methods described on the accompanying letter. We will contact you within five business days to acknowledge receipt and let you know if you need to send additional information or documents.

We will use the information you provide to help us identify the assistance you may be eligible to receive. If you need help completing this application, please contact us at (855)818-6806.

For a list of HUD-approved housing counseling agencies that can provide foreclosure prevention information, contact one of the following federal government agencies:

- The U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or [www.hud.gov/counseling](http://www.hud.gov/counseling)
- The Consumer Financial Protection Bureau (CFPB) at (855) 411-2372 or [www.consumerfinance.gov/mortgagehelp](http://www.consumerfinance.gov/mortgagehelp)

If you need assistance with translation or other language assistance, HUD-approved housing counseling agencies may be able to assist you. These services are provided without charge.

### Borrower Information

**Borrower's name:** \_\_\_\_\_

Social Security Number (last 4 digits): \_\_\_\_\_

E-mail address: \_\_\_\_\_

Primary phone number: \_\_\_\_\_  Cell  Home  Work  Other

Alternate phone number: \_\_\_\_\_  Cell  Home  Work  Other

**Co-borrower's name:** \_\_\_\_\_

Social Security Number (last 4 digits): \_\_\_\_\_

E-mail address: \_\_\_\_\_

Primary phone number: \_\_\_\_\_  Cell  Home  Work  Other

Alternate phone number: \_\_\_\_\_  Cell  Home  Work  Other

Preferred contact method (choose all that apply):  Cell phone  Home phone  Work phone  Email  
 Text—Checking this box indicates your consent for text messaging

Is either borrower on active duty with the military (including the National Guard and Reserves), the dependent of a borrower on active duty, or the surviving spouse of a member of the military who was on active duty at the time of death?  Yes  No

### Property Information

Property Address: \_\_\_\_\_

Mailing address (if different from property address): \_\_\_\_\_

• The property is currently:  A primary residence  A second home  An investment property

• The property is (select all that apply):  Owner occupied  Renter occupied  Vacant

- I want to:  Keep the property  Sell the property  Transfer ownership of the property to my servicer  
 Undecided

Is the property listed for sale?  Yes  No – If yes, provide the listing agent's name and phone number—or indicate "for sale by owner" if applicable: \_\_\_\_\_

Is the property subject to condominium or homeowners' association (HOA) fees?  Yes  No – If yes, indicate monthly dues: \$ \_\_\_\_\_

## Hardship Information

The hardship causing mortgage payment challenges began on approximately (date) \_\_\_\_\_ and is believed to be:

- Short-term (up to 6 months)
- Long-term or permanent (greater than 6 months)
- Resolved as of (date) \_\_\_\_\_

TYPE OF HARDSHIP (CHECK ALL THAT APPLY)	REQUIRED HARDSHIP DOCUMENTATION <sup>2</sup>
<input type="checkbox"/> Unemployment	<ul style="list-style-type: none"> <li>▪ Not required</li> </ul>
<input type="checkbox"/> Reduction in income: a hardship that has caused a decrease in your income due to circumstances outside your control (e.g., elimination of overtime, reduction in regular working hours, a reduction in base pay)	<ul style="list-style-type: none"> <li>▪ Not required</li> </ul>
<input type="checkbox"/> Increase in housing-related expenses: a hardship that has caused an increase in your housing expenses due to circumstances outside your control (e.g., uninsured losses, increased property taxes, HOA special assessment)	<ul style="list-style-type: none"> <li>▪ Not required</li> </ul>
<input type="checkbox"/> Disaster (natural or man-made) impacting the property or borrower's place of employment	<ul style="list-style-type: none"> <li>▪ Not required</li> </ul>
<input type="checkbox"/> Long-term or permanent disability, or serious illness of a borrower/co-borrower or dependent family member	<ul style="list-style-type: none"> <li>▪ Written statement from the borrower, or other documentation verifying disability or illness</li> </ul> <p><b>Note:</b> Detailed medical information is not required, and information from a medical provider is not required</p>
<input type="checkbox"/> Divorce or legal separation	<ul style="list-style-type: none"> <li>▪ Final divorce decree or final separation agreement <b>OR</b></li> <li>▪ Recorded quitclaim deed</li> </ul>
<input type="checkbox"/> Separation of borrowers unrelated by marriage, civil union, or similar domestic partnership under applicable law	<ul style="list-style-type: none"> <li>▪ Recorded quitclaim deed <b>OR</b></li> <li>▪ Legally binding agreement evidencing that the non-occupying borrower or co-borrower has relinquished all rights to the property</li> </ul>
<input type="checkbox"/> Death of borrower or death of either the primary or secondary wage earner	<ul style="list-style-type: none"> <li>▪ Death certificate <b>OR</b></li> <li>▪ Obituary or newspaper article reporting the death</li> </ul>

<sup>2</sup> Trinity Financial Services, LLC may request or require additional documentation after a review of your file.

<input type="checkbox"/> Distant employment transfer/relocation	<ul style="list-style-type: none"> <li>▪ <b>For active duty service members:</b> Permanent Change of Station (PCS) orders or letter showing transfer.</li> <li>▪ <b>For employment transfers/new employment:</b> Copy of signed offer letter or notice from employer showing transfer to a new location or written explanation if employer documentation not applicable, <b>AND</b></li> <li>▪ Documentation that reflects the amount of any relocation assistance provided (not required for those with PCS orders)</li> </ul>
<input type="checkbox"/> COVID-19 Virus	<ul style="list-style-type: none"> <li>▪ Not required</li> </ul>
<input type="checkbox"/> Other – hardship that is not covered above:  <hr/> <hr/> <hr/> <hr/>	<ul style="list-style-type: none"> <li>▪ Written explanation describing the details of the hardship and any relevant documentation</li> </ul>

## Borrower Income

Please enter all borrower income amounts in middle column. We will use this information toward evaluating you for eligibility for a loss mitigation option.

MONTHLY TOTAL BORROWER INCOME TYPE & AMOUNT		REQUIRED INCOME DOCUMENTATION
Gross (pre-tax) wages, salaries and overtime pay, commissions, tips, and bonuses	\$	<ul style="list-style-type: none"> <li>▪ Most recent pay stub and documentation of year-to- date earnings if not on pay stub <b>OR</b></li> <li>▪ Two most recent bank statements showing income deposit amounts</li> </ul>
Self-employment income	\$	<ul style="list-style-type: none"> <li>▪ Two most recent bank statements showing self- employed income deposit amounts <b>OR</b></li> <li>▪ Most recent signed and dated quarterly or year-to-date profit/loss statement <b>OR</b></li> <li>▪ Most recent complete and signed business tax return <b>OR</b></li> <li>▪ Most recent complete and signed individual federal income tax return</li> </ul>
Unemployment benefit income	\$	<ul style="list-style-type: none"> <li>▪ No documentation required</li> </ul>
Taxable Social Security, pension, disability, death benefits, adoption assistance, housing allowance, and other public assistance	\$	<ul style="list-style-type: none"> <li>▪ Two most recent bank statements showing deposit amounts <b>OR</b></li> <li>▪ Award letters or other documentation showing the amount and frequency of the benefits</li> </ul>
Non-taxable Social Security or disability income	\$	<ul style="list-style-type: none"> <li>▪ Two most recent bank statements showing deposit amounts <b>OR</b></li> </ul>

		<ul style="list-style-type: none"> <li>■ Award letters or other documentation showing the amount and frequency of the benefits</li> </ul>
Rental income (rents received, less expenses other than mortgage expense)	\$	<ul style="list-style-type: none"> <li>■ Two most recent bank statements demonstrating receipt of rent <b>OR</b></li> <li>■ Two most recent deposited rent checks</li> </ul>
Investment or insurance income	\$	<ul style="list-style-type: none"> <li>■ Two most recent investment statements <b>OR</b></li> <li>■ Two most recent bank statements supporting receipt of the income</li> </ul>
Other sources of income not listed above (Note: Only include alimony, child support, or separate maintenance income if you choose to have it considered for repaying this loan)	\$	<ul style="list-style-type: none"> <li>■ Two most recent bank statements showing receipt of income <b>OR</b></li> <li>■ Other documentation showing the amount and frequency of the income</li> </ul>

## Current Borrower Assets

Exclude retirement funds such as a 401(k) or Individual Retirement Account (IRA), and college savings accounts such as a 529 plan.

Checking account(s) and cash on hand	\$
Savings, money market funds, and Certificates of Deposit (CDs)	\$
Stocks and bonds (non-retirement accounts)	\$
Other:	\$

## Authorization to Release Information

I hereby authorize Trinity Financial Services, LLC and/or any designated agent, assistant, Title Company or its agents to verify any and all information pertaining to the mortgage or property detailed below and any additional financial information pertaining to this property and individual Borrower.

It is understood a photocopy or fax of this form will also serve as authorization.

Property Address: \_\_\_\_\_

### Current Owner of 1<sup>st</sup> Mortgage:

Mortgage Company: \_\_\_\_\_

Account Number: \_\_\_\_\_

Account Opened: \_\_\_\_\_

Note Amount: \_\_\_\_\_

### Current Owner of 2<sup>nd</sup> Mortgage:

Mortgage Company: \_\_\_\_\_

Account Number: \_\_\_\_\_

Account Opened: \_\_\_\_\_

Note Amount: \_\_\_\_\_

### Authorized by:

Borrower Printed Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Borrower signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Borrower Certification and Agreement

1. I certify and acknowledge that all of the information in this Mortgage Assistance Application is truthful, and the hardship I identified contributed to my need for mortgage relief. Knowingly submitting false information may violate Federal and other applicable law.
2. I agree to provide Trinity Financial Services, LLC with all required documents, including any additional supporting documentation as requested, and will respond in a timely manner to all Trinity Financial Services, LLC communications.
3. I acknowledge and agree that Trinity Financial Services, LLC is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request.
4. I consent to Trinity Financial Services, LLC obtaining a current credit report for the borrower and co-borrower.
5. I consent to the disclosure by Trinity Financial Services, LLC of any personal information collected for the purpose of processing my mortgage assistance request, to any third party that deals with my first lien or subordinate lien (if applicable) mortgage loan(s), including Fannie Mae, Freddie Mac, or any investor, insurer, guarantor, or servicer of my mortgage loan(s) or any companies that provide support services to them. Personal information may include, but is not limited to: (a) my name, address, telephone number, (b) my Social Security number, (c) my credit score, (d) my income, and (e) my payment history and information about my account balances and activity.
6. I agree that the terms of this borrower certification and agreement will apply to any loan modification plan, repayment plan, or forbearance plan that I may be offered based on this application.
7. I consent to being contacted concerning this application for mortgage assistance at any telephone number, including mobile telephone number, or email address I have provided to Trinity Financial Services, LLC or the original lender, prior servicer, or other authorized third party.

Borrower signature: \_\_\_\_\_ Date: \_\_\_\_\_

Co-Borrower signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please submit your completed application, together with the required documentation, to Trinity Financial Services, LLC via:**

Email to:	<b>LNP@trinityfs.com</b>
Overnight mail to:	<b>Trinity Financial Services, LLC</b>
	<b>2618 San Miguel Drive, Ste 303</b>
	<b>Newport Beach, CA 92660</b>
Fax to:	<b>(805) 516-2608</b>

**We will contact you within five business days to acknowledge receipt and let you know if you need to send additional information or documents.**

**We will use the information you provided to help us identify the assistance you may be eligible to receive.**

### Information on Avoiding Foreclosure

#### Learn more About Options to Avoid Foreclosure

The variety of options summarized below may help you keep your home. For example, you may be eligible to modify your mortgage, lowering your monthly payment to make it more affordable. Contact us at (855) 818-6806 to determine if you qualify.

Depending on your circumstances, staying in your home may not be possible. In this case, a short sale or deed-in-lieu of foreclosure may be a better choice than foreclosure – see the table below for more information.

Don't delay, as failure to take action may result in foreclosure proceedings being initiated on your mortgage. However, please be aware that we will not initiate foreclosure proceedings where prohibited in those jurisdictions where applicable law has provided additional foreclosure protections for borrowers affected by COVID-19.

OPTIONS TO STAY IN YOUR HOME	OVERVIEW	BENEFIT
<b>Reinstatement</b>	Pay the total amount you owe, in a lump sum payment and by a specific date we agree to. This may follow a forbearance plan as described below	Allows you to avoid foreclosure by bringing your mortgage current if you can show you have funds that will become available at a specific date in the future.
<b>Repayment Plan</b>	Pay back your past-due payments together with your regular payments over an extended period of time.	Allows you time to catch up on late payments without having to come up with a lump sum.
<b>Forbearance Plan</b>	Make reduced mortgage payments or no mortgage payments for a specific period of time.	Gives you time to improve your financial situation and possibly qualify for a better option than would be available right now.
<b>Modification</b>	Receive modified mortgage terms to make it more affordable or manageable.	Permanently modifies your mortgage so that your payments or terms are more manageable as a permanent solution to a long-term or permanent hardship.
OPTIONS TO LEAVE YOUR HOME	OVERVIEW	BENEFIT
<b>Short Sale</b>	Sell your home and pay off a portion of your mortgage balance when you owe more on the home than it is worth.	Allows you to transition out of your home without going through foreclosure. In some cases, relocation assistance may be available.
<b>Deed-in-Lieu of Foreclosure</b>	Transfer the ownership of your property to us.	Allows you to transition out of your home without going through foreclosure. In some cases, relocation assistance via cash for keys may be available.

#### We Want to Help

Take action to gain peace of mind and control of your housing situation. Call us at (855) 818-6806 and we'll talk about available options and help you understand the forms and documents we need from you to determine if you qualify for an option to avoid foreclosure.



## LOAN NEGOTIATION & APPLICATION

Dear Borrower:

This letter is in response to your recent inquiry regarding a temporary payment plan, short sale, or settlement agreement regarding the above referenced loan. Please complete this entire package with supporting documentation and forward it to Trinity Financial Services, LLC.

**DO NOT send an incomplete package, or your request will not be considered.  
No package will be processed until ALL items requested herein are received.**

The documentation you provide will be reviewed and verified. The information obtained will help in assessing your financial situation. Please be advised that submission of this information is not a guarantee that a payment plan or short sale of any kind will be approved.

**Please send this completed package via:**

**Email:**

LNP@trinityfs.com

**OR**

**Overnight address:**

Trinity Financial Services, LLC  
2618 San Miguel Drive, Ste 303  
Newport Beach, CA 92660

**OR**

**Fax:**

(805) 516-2608

*THIS IS AN ATTEMPT TO COLLECT A DEBT. THIS COMMUNICATION IS FROM A DEBT COLLECTOR. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. You have a right to dispute this debt, in part or in full, with Trinity Financial Services, LLC within 30 days. If Trinity Financial Services, LLC does not receive a response from you within 30 days, the debt will be assumed VALID.*



**EXHIBIT A**  
**Authorization to Release Information**

I hereby authorize Trinity Financial Services, LLC and/or any designated agent, assistant, Title Company or its agents to verify any and all information pertaining to the mortgage or property detailed below and any additional financial information pertaining to this property and individual Borrower.

It is understood a photocopy or fax of this form will also serve as authorization.

Property Address: \_\_\_\_\_

**Current Owner of 1<sup>st</sup> Mortgage**

Mortgage Company: \_\_\_\_\_

Account Number: \_\_\_\_\_

Account Opened: \_\_\_\_\_

Note Amount: \_\_\_\_\_

**Current Owner of 2<sup>nd</sup> Mortgage**

Mortgage Company: \_\_\_\_\_

Account Number: \_\_\_\_\_

Account Opened: \_\_\_\_\_

Note Amount: \_\_\_\_\_

Authorized by:

---

Borrower Signature

---

Social Security Number

---

Date of Birth

---

Printed Name

---

Date



**EXHIBIT B**  
**Borrower's Statement of Attorney Representation**

Currently, a lawsuit has not been filed in your state regarding this issue. Please contact your attorney immediately. If this matter is not resolved, Trinity Financial Services, LLC will pursue this matter by any legal means necessary, including but not limited to, possible foreclosure of the property specified in the mortgage/deed of trust or possible initiation of a lawsuit for personal liability of your debt to Trinity Financial Services, LLC.

You are not required to be represented by an attorney but it is HIGHLY recommended. If you are not represented by an attorney but wish to be, you may contact the American Bar Association for a referral to an attorney in your state. The link to the American Bar Association's referral website is [www.FindLegalHelp.org](http://www.FindLegalHelp.org).

- I am currently not represented by an attorney. I have been advised that legal representation is recommended but not required. Please contact me directly regarding the negotiation of this loan. I reserve the right to retain an attorney at a future date.
- I am currently not represented by an attorney, but I am in the process of obtaining an attorney. I have contacted the American Bar Association and/or have used an attorney referral service. Until an attorney has contacted Trinity Financial Services, LLC please contact me directly.
- I am currently represented by an attorney. Their contact information is as follows:

Firm Name: \_\_\_\_\_

Attorney Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
Borrower Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



## EXHIBIT C (OPTIONAL FORM)

You may contact the U.S. Department of Housing and Urban Development (HUD) for information and assistance in credit counseling. You may contact a HUD certified credit counselor via their website <http://www.hud.gov/offices/hsg/sfh/hcc/fc/> or call (888) 995-HOPE (4673) to immediately speak to an advisor. These credit counseling services are third party services provided by the U.S. Government under the Making Home Affordable program ([www.MakingHomeAffordable.gov](http://www.MakingHomeAffordable.gov)) and are FREE for you and they will act in YOUR best interest. Please contact the HUD for more information on credit counseling.

### **Borrower's Statement of Credit Counseling**

- I have received a briefing from a credit counseling agency approved and certified by the U.S. Department of Housing and Urban Development (HUD) and they assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency. You must also sign the below Affidavit of Credit Counseling.*
- I have received a briefing from a credit counseling agency approved and certified the U.S. Department of Housing and Urban Development (HUD) and they assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must sign the below Affidavit of Credit Counseling.*

### **Affidavit of Credit Counseling**

I, (Name) \_\_\_\_\_, received credit counseling from (Name of Credit Counselor) \_\_\_\_\_, an agency certified and approved by the U.S. Department of Housing and Urban Development (HUD) to provide credit counseling in (State) \_\_\_\_\_. I [received/did not receive] a case reference number from the credit counselor [which is # \_\_\_\_\_.] A debt repayment plan [was/was not] prepared.

This credit counseling session was conducted via:

- Telephone on Date(s) \_\_\_\_\_
- Mail Correspondence on Date(s) \_\_\_\_\_
- E-Mail on Date(s) \_\_\_\_\_

The contact information to verify my credit counseling session(s) is as follows:

Credit Counselor Company Name: \_\_\_\_\_

Credit Counselor Name: \_\_\_\_\_

Credit Counselor Company Address: \_\_\_\_\_

Credit Counselor Company Phone: \_\_\_\_\_



I certify that the information provided in this Borrower's Statement of Credit Counseling and Affidavit of Credit Counseling is true and correct. I authorize Trinity Financial Services, LLC to verify this information.

---

Borrower Signature

---

Printed Name

---

Date

*\*This form was developed by Trinity Financial Services, LLC for internal use.*



**EXHIBIT D**  
**Uniform Borrower Assistance Form**

Please complete the following page. Form 710 is a standard form provided by Fannie Mae and Freddie Mac to determine if you are eligible for any government programs. Trinity Financial Services, LLC will NOT apply to government aide on your behalf. Trinity Financial Services, LLC will use the completed form for informational use only. If you are having difficulty in completing this form, please contact a HUD approved credit counselor to assist you. More information can be found on Exhibit C regarding contacting a HUD approved credit counselor.



### APPLICATION REQUIREMENTS CHECKLIST

- Sign authorization permitting Trinity to discuss this loan with a third party, if necessary. (Attached as Exhibit A - Must be received with initial application)
- Complete the “Borrower’s Statement of Attorney Representation” (Attached as Exhibit B - Optional only if represented by attorney)
- Complete the “Borrower’s Statement of Credit Counseling” (Attached as Exhibit C - Optional)
- Complete the “Uniform Borrower Assistance Form” (Cover Page as Exhibit D with Fannie Mae/Freddie Mac Standard Form 710 attached)
- Income Requirements – Household income is required in order to be considered for any type of workout assistance request
- Attach “Required Income Documentation (Tax Returns)” for tax years 2016-2018 – Federal tax returns only, state tax returns are not required.
- Attach “Required Income Documentation (Misc. Documentation)”. Please see requirements reference in Page 2 of the Uniform Borrower Assistance Form (Exhibit D).
  - \*Income documentation for **every** source of income in the household is required\*
  - For contribution income submit signed letter of contribution with monthly amount or percentage of income being contributed. All income documents listed below apply to contributors as well.
- Attach “Hardship Affidavit (Letters)”. Please see requirements referenced in Page 3 of the Uniform Borrower Assistance Form (Exhibit D)
  - \*Detailed hardship letter is required with hardship description, timeline, confirmation if hardship is still ongoing or if it has ended; attach hardship supporting documents, if applicable\*
- Attach most recent Senior Mortgage Statement. Mortgage statement **must** be provided in order for package to be reviewed.
  - \*Senior Lienholder documentation must be dated within 30 days of submission. If Senior servicer is no longer mailing statements, contact servicer to request the most recent statement OR a payoff AND a reinstatement\*
  - If monthly payment for senior lien **does not** include property taxes and insurance, please submit most recent property tax bill AND homeowners insurance declaration page.
- Attach Senior Lienholder Modification Agreement (ALL pages), if account has been modified at any given time during the life of the current existing loan.
- W2 Wage Earners – Attach most recent, consecutive pay stubs (30 days worth).
- Self-Employment - Attach most recent quarterly profit/loss sheet.



- Benefits – If receiving SSI, SSD, Retirement or any other type of benefits, submit recent award letter along with proof of monthly income.
- Child Support, alimony or separate maintenance – NOTICE – Not needed to be revealed if you do not choose to have it considered for modification.
- Business Ownership – Attach business ownership documents (LLC, articles of incorporation, etc...), reflecting owners' names and percentage of ownership.
- Attach the last three (3) most recent, consecutive months of personal and / or business bank statements.
  - \*Statements for ALL open checking and savings account are required. Submit ALL pages for every statement, including blank pages or pages with bank writing on them\*
- Investments, pension and retirement accounts – Attach a copy of the most recent monthly or quarterly statement for all open accounts, all pages.
- Rental/Investments Properties – Following documents required for every property owned besides subject property.
  - Most recent mortgage statement required for all mortgage accounts related to each property. If senior mortgage payment does not include taxes and insurance, submit most recent property tax bill and homeowners insurance declaration page.
  - Rental/Lease agreement with current dates, along with proof of rental income being received.
  - If any property is vacant, submit proof
  - If any property is going through foreclosure or might be lost in foreclosure, submit supporting documentation
- Detailed household monthly expenses
  - If space provided on UBAF is not sufficient to list all household monthly expenses, submit a detailed breakdown list of expenses on a separate document. This is necessary to fully understand the household monthly budget, accurately.
- Attach most recent Senior Payoff and Reinstatement Statement
- ***FOR SHORT SALE REQUESTS*** Submit estimated HUD-1 with current dates

# EXHIBIT 4

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE HOUSE BILL 2476**

Chapter 30, Laws of 2020

66th Legislature  
2020 Regular Session

DEBT BUYERS

EFFECTIVE DATE: June 11, 2020

Passed by the House February 12, 2020  
Yea 96 Nays 0

LAURIE JINKINS  
**Speaker of the House of Representatives**

Passed by the Senate March 3, 2020  
Yea 48 Nays 0

CYRUS HABIB  
**President of the Senate**

Approved March 18, 2020 10:33 AM

JAY INSLEE  
**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2476** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN  
**Chief Clerk**

FILED  
March 18, 2020

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2476**

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Passed Legislature - 2020 Regular Session

**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Walen, Duerr, Kloba, Kilduff, Leavitt, Lekanoff, Orwall, Davis, Doglio, Frame, Macri, Goodman, and Ormsby)

READ FIRST TIME 01/28/20.

1       AN ACT Relating to debt buyers; amending RCW 19.16.100,  
2 19.16.260, 19.16.440, and 19.16.450; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       **Sec. 1.** RCW 19.16.100 and 2019 c 227 s 3 are each amended to  
5 read as follows:

6       Unless a different meaning is plainly required by the context,  
7 the following words and phrases as hereinafter used in this chapter  
8 shall have the following meanings:

9       (1) "Board" means the Washington state collection agency board.

10       (2) "Claim" means any obligation for the payment of money or  
11 thing of value arising out of any agreement or contract, express or  
12 implied.

13       (3) "Client" or "customer" means any person authorizing or  
14 employing a collection agency to collect a claim.

15       (4) "Collection agency" means and includes:

16       (a) Any person directly or indirectly engaged in soliciting  
17 claims for collection, or collecting or attempting to collect claims  
18 owed or due or asserted to be owed or due another person;

19       (b) Any person who directly or indirectly furnishes or attempts  
20 to furnish, sells, or offers to sell forms represented to be a  
21 collection system or scheme intended or calculated to be used to

1 collect claims even though the forms direct the debtor to make  
2 payment to the creditor and even though the forms may be or are  
3 actually used by the creditor himself or herself in his or her own  
4 name;

5 (c) Any person who in attempting to collect or in collecting his  
6 or her own claim uses a fictitious name or any name other than his or  
7 her own which would indicate to the debtor that a third person is  
8 collecting or attempting to collect such claim;

9 (d) ~~((Any person or entity that is engaged in the business of~~  
10 ~~purchasing delinquent or charged off claims for collection purposes,~~  
11 ~~whether it collects the claims itself or hires a third party for~~  
12 ~~collection or an attorney for litigation in order to collect such~~  
13 ~~claims;)) A debt buyer as defined in this section;~~

14 (e) Any person or entity attempting to enforce a lien under  
15 chapter 60.44 RCW, other than the person or entity originally  
16 entitled to the lien.

17 (5) "Collection agency" does not mean and does not include:

18 (a) Any individual engaged in soliciting claims for collection,  
19 or collecting or attempting to collect claims on behalf of a licensee  
20 under this chapter, if said individual is an employee of the  
21 licensee;

22 (b) Any individual collecting or attempting to collect claims for  
23 not more than one employer, if all the collection efforts are carried  
24 on in the name of the employer and if the individual is an employee  
25 of the employer;

26 (c) Any person whose collection activities are carried on in his,  
27 her, or its true name and are confined and are directly related to  
28 the operation of a business other than that of a collection agency,  
29 such as but not limited to: Trust companies; savings and loan  
30 associations; building and loan associations; abstract companies  
31 doing an escrow business; real estate brokers; property management  
32 companies collecting assessments, charges, or fines on behalf of  
33 condominium unit owners associations, associations of apartment  
34 owners, or homeowners' associations; public officers acting in their  
35 official capacities; persons acting under court order; lawyers;  
36 insurance companies; credit unions; loan or finance companies;  
37 mortgage banks; and banks;

38 (d) Any person who on behalf of another person prepares or mails  
39 monthly or periodic statements of accounts due if all payments are

1 made to that other person and no other collection efforts are made by  
2 the person preparing the statements of account;

3 (e) An "out-of-state collection agency" as defined in this  
4 chapter; or

5 (f) Any person while acting as a debt collector for another  
6 person, both of whom are related by common ownership or affiliated by  
7 corporate control, if the person acting as a debt collector does so  
8 only for persons to whom it is so related or affiliated and if the  
9 principal business of the person is not the collection of debts.

10 (6) "Commercial claim" means any obligation for payment of money  
11 or thing of value arising out of any agreement or contract, express  
12 or implied, where the transaction which is the subject of the  
13 agreement or contract is not primarily for personal, family, or  
14 household purposes.

15 (7) "Debt buyer" means any person or entity that is engaged in  
16 the business of purchasing delinquent or charged off claims for  
17 collection purposes, whether it collects the claims itself or hires a  
18 third party for collection or an attorney for litigation in order to  
19 collect such claims.

20 (8) "Debtor" means any person owing or alleged to owe a claim.

21 ((+8)) (9) "Director" means the director of licensing.

22 ((+9)) (10) "Licensee" means any person licensed under this  
23 chapter.

24 ((+10)) (11) "Medical debt" means any obligation for the payment  
25 of money arising out of any agreement or contract, express or  
26 implied, for the provision of health care services as defined in RCW  
27 48.44.010. In the context of "medical debt," "charity care" has the  
28 same meaning as provided in RCW 70.170.020.

29 ((+11)) (12) "Out-of-state collection agency" means a person  
30 whose activities within this state are limited to collecting debts  
31 from debtors located in this state by means of interstate  
32 communications, including telephone, mail, or facsimile transmission,  
33 from the person's location in another state on behalf of clients  
34 located outside of this state, but does not include any person who is  
35 excluded from the definition of the term "debt collector" under the  
36 federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

37 ((+12)) (13) "Person" includes individual, firm, partnership,  
38 trust, joint venture, association, or corporation.

39 ((+13)) (14) "Statement of account" means a report setting forth  
40 only amounts billed, invoices, credits allowed, or aged balance due.

1       **Sec. 2.**   RCW 19.16.260 and 2013 c 148 s 3 are each amended to  
 2 read as follows:

3       (1) (a) No collection agency or out-of-state collection agency may  
 4 bring or maintain an action in any court of this state involving the  
 5 collection of its own claim or a claim of any third party without  
 6 alleging and proving that he, she, or it is duly licensed under this  
 7 chapter and has satisfied the bonding requirements hereof, if  
 8 applicable: PROVIDED, That in any case where judgment is to be  
 9 entered by default, it shall not be necessary for the collection  
 10 agency or out-of-state collection agency to prove such matters.

11       (b) A copy of the current collection agency license or out-of-  
 12 state collection agency license, certified by the director to be a  
 13 true and correct copy of the original, shall be *prima facie* evidence  
 14 of the licensing and bonding of such collection agency or out-of-  
 15 state collection agency as required by this chapter.

16       (2) No debt buyer may:

17       (a) Bring any legal action against a debtor without attaching to  
 18 the complaint a copy of the contract or other writing evidencing the  
 19 original debt that contains the signature of the debtor, or:

20       (i) If a claim is based on a credit card debt for which a signed  
 21 writing evidencing the original debt does not exist, a copy of the  
 22 most recent monthly statement recording a purchase transaction,  
 23 payment, or other extension of credit and, if the claim is based on a  
 24 breach of contract, a copy of the terms and conditions in place at  
 25 the time of the most recent monthly statement recording a purchase  
 26 transaction, payment, or extension of credit must also be attached;  
 27 or

28       (ii) If a claim is based on an electronic transaction for which a  
 29 signed writing evidencing the original debt never existed, a copy of  
 30 the records created during the transaction evidencing the debtor's  
 31 agreement to the debt and recording the date and terms of the  
 32 transaction and information provided by the debtor during the  
 33 transaction.

34       (b) Request a default judgment against a debtor in any legal  
 35 action without providing to the court evidence that satisfies the  
 36 requirements of rule 803(a)(6) of the rules of evidence and RCW  
 37 5.45.020 or is otherwise authorized by law or rule that establishes  
 38 the amount and nature of the debt, including the documents required  
 39 by (a) of this subsection, and:

40       (i) The original account number at charge-off;

1                   (ii) The original creditor at charge-off;

2                   (iii) The amount due at charge-off or, if the balance has not  
3                   been charged off, an itemization of the amount claimed to be owed,  
4                   including the principal, interest, fees, and other charges or  
5                   reductions from payment made or other credits;

6                   (iv) An itemization of post charge-off additions, if any;

7                   (v) The date of the last payment, if applicable, or the date of  
8                   the last transaction;

9                   (vi) If the account is not a revolving credit account, the date  
10                   the debt was incurred; and

11                   (vii) A copy of the assignment or other writing establishing that  
12                   the debt buyer is the owner of the debt. If the debt was assigned  
13                   more than once, each assignment or other writing evidencing transfer  
14                   of ownership must be attached to establish an unbroken chain of  
15                   ownership, beginning with the original creditor to the first debt  
16                   buyer and each subsequent sale.

17                   (c) Bring any legal action against a debtor without providing a  
18                   disclosure in the complaint, in no smaller than ten point type,  
19                   stating each of the following:

20                   (i) That the action is being brought by, or for the benefit of, a  
21                   person or entity that is engaged in the business of purchasing  
22                   delinquent or charged off claims for collection purposes;

23                   (ii) The date the claim or obligation was purchased;

24                   (iii) The identity of the person or entity from whom or which the  
25                   claim or obligation was purchased;

26                   (iv) That the plaintiff may have purchased this claim or  
27                   obligation for less than the value stated in the complaint;

28                   (v) If the claim or obligation was at any time sold without any  
29                   representation or warranty of accuracy, a statement to that effect;  
30                   and

31                   (vi) That the action is being commenced within, and is not barred  
32                   by, an applicable statute of limitations.

33                   **Sec. 3.** RCW 19.16.440 and 1994 c 195 s 11 are each amended to  
34                   read as follows:

35                   The operation of a collection agency or out-of-state collection  
36                   agency without a license as prohibited by RCW 19.16.110 and the  
37                   commission by a licensee or an employee of a licensee of an act or  
38                   practice prohibited by RCW 19.16.250 or 19.16.260 are declared to be  
39                   unfair acts or practices or unfair methods of competition in the

1 conduct of trade or commerce for the purpose of the application of  
2 the ((Consumer Protection Act)) consumer protection act found in  
3 chapter 19.86 RCW.

4       **Sec. 4.** RCW 19.16.450 and 1971 ex.s. c 253 s 36 are each amended  
5 to read as follows:

6           If an act or practice in violation of RCW 19.16.250 or 19.16.260  
7 is committed by a licensee or an employee of a licensee in the  
8 collection of a claim, neither the licensee, the customer of the  
9 licensee, nor any other person who may thereafter legally seek to  
10 collect on such claim shall ever be allowed to recover any interest,  
11 service charge, attorneys' fees, collection costs, delinquency  
12 charge, or any other fees or charges otherwise legally chargeable to  
13 the debtor on such claim: PROVIDED, That any person asserting the  
14 claim may nevertheless recover from the debtor the amount of the  
15 original claim or obligation.

16       NEW SECTION.   **Sec. 5.** This act applies prospectively only and  
17 not retroactively. It applies with respect to delinquent or charged  
18 off claims purchased for collection purposes by a debt buyer on or  
19 after the effective date of this section.

Passed by the House February 12, 2020.

Passed by the Senate March 3, 2020.

Approved by the Governor March 18, 2020.

Filed in Office of Secretary of State March 18, 2020.

--- END ---

# EXHIBIT 5

## Collection Agencies

19.16.100

(b) Grant exemptions from the requirements for the filing of annual registration statements with the office to charitable organizations organized under the laws of another state having their principal place of business outside this state whose funds are derived principally from sources outside this state and that have been exempted from the filing of registration statements by the statute under whose laws they are organized if such a state has a statute similar in substance to this chapter.

(3) The secretary may adopt rules relating to reciprocal agreements consistent with this section. [2007 c 471 § 17.]

**19.09.912 Effective date—1983 c 265.** With the exception of section 19 of this act, this act shall take effect January 1, 1984. [1983 c 265 § 21.]

**Reviser's note:** "Section 19 of this act" is an uncodified appropriation section.

**19.09.913 Effective date—1986 c 230.** This act shall take effect on January 1, 1987. [1986 c 230 § 21.]

**19.09.915 Effective date—1993 c 471.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 471 § 44.]

**19.09.916 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 51.]

## Chapter 19.16 RCW

### COLLECTION AGENCIES

## Sections

19.16.100	Definitions.
19.16.110	License required.
19.16.120	Unprofessional conduct—Support order, noncompliance.
19.16.130	License—Application—Form—Contents.
19.16.140	License—Application—Fees—Exemptions.
19.16.150	Branch office certificate required.
19.16.160	License and branch office certificate—Form—Contents—Display.
19.16.170	Procedure upon change of name or business location.
19.16.180	Assignability of license or branch office certificate.
19.16.190	Surety bond requirements—Cash deposit or securities—Exception.
19.16.200	Action on bond, cash deposit or securities.
19.16.210	Accounting and payments by licensee to customer.
19.16.220	Accounting and payments by customer to licensee.
19.16.230	Licensee—Business office—Records to be kept.
19.16.240	Licensee—Trust fund account—Exception.
19.16.245	Financial statement.

19.16.250	Prohibited practices.
19.16.260	Licensing prerequisite to suit.
19.16.270	Presumption of validity of assignment.
19.16.280	Board created—Composition of board—Qualification of members.
19.16.290	Board—Initial members—Terms—Oath—Removal.
19.16.300	Board meetings—Quorum—Effect of vacancy.
19.16.310	Board—Compensation—Reimbursement of travel expenses.
19.16.320	Board—Territorial scope of operations.
19.16.330	Board—Immunity from suit.
19.16.340	Board—Records.
19.16.351	Additional powers and duties of board.
19.16.390	Personal service of process outside state.
19.16.410	Rules, orders, decisions, etc.
19.16.420	Copy of this chapter, rules and regulations available to licensee.
19.16.430	Violations—Operating agency without a license—Penalty—Return of fees or compensation.
19.16.440	Violations of RCW 19.16.110 and 19.16.250 are unfair and deceptive trade practices under chapter 19.86 RCW.
19.16.450	Violation of RCW 19.16.250—Additional penalty.
19.16.460	Violations may be enjoined.
19.16.470	Violations—Assurance of discontinuance—Effect.
19.16.480	Violation of injunction—Civil penalty.
19.16.500	Public bodies may retain collection agencies to collect public debts—Fees.
19.16.510	Uniform regulation of business and professions act.
19.16.900	Provisions cumulative—Violation of RCW 19.16.250 deemed civil.
19.16.920	Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected.
19.16.930	Effective date—1971 ex.s. c 253.
19.16.940	Short title.
19.16.950	Section headings.
19.16.960	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**19.16.100 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" means the Washington state collection agency board.

(2) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(3) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(4) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim;

(d) Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims;

**19.16.110****Title 19 RCW: Business Regulations—Miscellaneous**

(e) Any person or entity attempting to enforce a lien under chapter 60.44 RCW, other than the person or entity originally entitled to the lien.

(5) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(6) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

(7) "Debtor" means any person owing or alleged to owe a claim.

(8) "Director" means the director of licensing.

(9) "Licensee" means any person licensed under this chapter.

(10) "Medical debt" means any obligation for the payment of money arising out of any agreement or contract, express or implied, for the provision of health care services as defined in RCW 48.44.010. In the context of "medical debt," "charity care" has the same meaning as provided in RCW 70.170.020.

(11) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not

include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(12) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(13) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due. [2019 c 227 § 3; 2015 c 201 § 3. Prior: 2013 c 148 § 1; 2003 c 203 § 1; prior: 2001 c 47 § 1; 2001 c 43 § 1; 1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

**Effective date—2013 c 148 §§ 1 and 3:** "Sections 1 and 3 of this act take effect October 1, 2013." [2013 c 148 § 4.]

**19.16.110 License required.** No person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency or out-of-state collection agency duly licensed under this chapter to procure a collection agency license. [1994 c 195 § 2; 1971 ex.s. c 253 § 2.]

**19.16.120 Unprofessional conduct—Support order, noncompliance.** In addition to other provisions of this chapter, and the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150, if applicable, have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190, if applicable, has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Has had any judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: PROVIDED, That in no event shall a license be issued unless the judgment debt has been discharged;

(b) Has had his or her license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he or she has been relicensed to practice law in this state;

(c) Has had any judgment entered against such a person under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not

# EXHIBIT 6

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1822**

Chapter 148, Laws of 2013

63rd Legislature  
2013 Regular Session

DEBT COLLECTION PRACTICES

EFFECTIVE DATE: 07/28/13 - Except sections 1 and 3, which become effective 10/01/13.

Passed by the House March 9, 2013  
Yea 97 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate April 17, 2013  
Yea 48 Nays 0

BRAD OWEN

**President of the Senate**

Approved May 7, 2013, 2:05 p.m.

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1822** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

**Chief Clerk**

FILED

May 7, 2013

JAY INSLEE

**Governor of the State of Washington**

Secretary of State  
State of Washington

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**SUBSTITUTE HOUSE BILL 1822**

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Passed Legislature - 2013 Regular Session

**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By House Judiciary (originally sponsored by Representative Stanford)**

READ FIRST TIME 02/22/13.

1       AN ACT Relating to debt collection practices; amending RCW  
2 19.16.100, 19.16.250, and 19.16.260; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       **Sec. 1.** RCW 19.16.100 and 2003 c 203 s 1 are each amended to read  
5 as follows:

6       Unless a different meaning is plainly required by the context, the  
7 following words and phrases as hereinafter used in this chapter shall  
8 have the following meanings:

9       (1) "Person" includes individual, firm, partnership, trust, joint  
10 venture, association, or corporation.

11       (2) "Collection agency" means and includes:

12       (a) Any person directly or indirectly engaged in soliciting claims  
13 for collection, or collecting or attempting to collect claims owed or  
14 due or asserted to be owed or due another person;

15       (b) Any person who directly or indirectly furnishes or attempts to  
16 furnish, sells, or offers to sell forms represented to be a collection  
17 system or scheme intended or calculated to be used to collect claims  
18 even though the forms direct the debtor to make payment to the creditor

1 and even though the forms may be or are actually used by the creditor  
2 himself or herself in his or her own name;

3 (c) Any person who in attempting to collect or in collecting his or  
4 her own claim uses a fictitious name or any name other than his or her  
5 own which would indicate to the debtor that a third person is  
6 collecting or attempting to collect such claim;

7 (d) Any person or entity that is engaged in the business of  
8 purchasing delinquent or charged off claims for collection purposes,  
9 whether it collects the claims itself or hires a third party for  
10 collection or an attorney for litigation in order to collect such  
11 claims.

12 (3) "Collection agency" does not mean and does not include:

13 (a) Any individual engaged in soliciting claims for collection, or  
14 collecting or attempting to collect claims on behalf of a licensee  
15 under this chapter, if said individual is an employee of the licensee;

16 (b) Any individual collecting or attempting to collect claims for  
17 not more than one employer, if all the collection efforts are carried  
18 on in the name of the employer and if the individual is an employee of  
19 the employer;

20 (c) Any person whose collection activities are carried on in his,  
21 her, or its true name and are confined and are directly related to the  
22 operation of a business other than that of a collection agency, such as  
23 but not limited to: Trust companies; savings and loan associations;  
24 building and loan associations; abstract companies doing an escrow  
25 business; real estate brokers; property management companies collecting  
26 assessments, charges, or fines on behalf of condominium unit owners  
27 associations, associations of apartment owners, or homeowners'  
28 associations; public officers acting in their official capacities;  
29 persons acting under court order; lawyers; insurance companies; credit  
30 unions; loan or finance companies; mortgage banks; and banks;

31 (d) Any person who on behalf of another person prepares or mails  
32 monthly or periodic statements of accounts due if all payments are made  
33 to that other person and no other collection efforts are made by the  
34 person preparing the statements of account;

35 (e) An "out-of-state collection agency" as defined in this chapter;  
36 or

37 (f) Any person while acting as a debt collector for another person,  
38 both of whom are related by common ownership or affiliated by corporate

1 control, if the person acting as a debt collector does so only for  
2 persons to whom it is so related or affiliated and if the principal  
3 business of the person is not the collection of debts.

4 (4) "Out-of-state collection agency" means a person whose  
5 activities within this state are limited to collecting debts from  
6 debtors located in this state by means of interstate communications,  
7 including telephone, mail, or facsimile transmission, from the person's  
8 location in another state on behalf of clients located outside of this  
9 state, but does not include any person who is excluded from the  
10 definition of the term "debt collector" under the federal fair debt  
11 collection practices act (15 U.S.C. Sec. 1692a(6)).

12 (5) "Claim" means any obligation for the payment of money or thing  
13 of value arising out of any agreement or contract, express or implied.

14 (6) "Statement of account" means a report setting forth only  
15 amounts billed, invoices, credits allowed, or aged balance due.

16 (7) "Director" means the director of licensing.

17 (8) "Client" or "customer" means any person authorizing or  
18 employing a collection agency to collect a claim.

19 (9) "Licensee" means any person licensed under this chapter.

20 (10) "Board" means the Washington state collection agency board.

21 (11) "Debtor" means any person owing or alleged to owe a claim.

22 (12) "Commercial claim" means any obligation for payment of money  
23 or thing of value arising out of any agreement or contract, express or  
24 implied, where the transaction which is the subject of the agreement or  
25 contract is not primarily for personal, family, or household purposes.

26 **Sec. 2.** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended  
27 to read as follows:

28 No licensee or employee of a licensee shall:

29 (1) Directly or indirectly aid or abet any unlicensed person to  
30 engage in business as a collection agency in this state or receive  
31 compensation from such unlicensed person: PROVIDED, That nothing in  
32 this chapter shall prevent a licensee from accepting, as forwarder,  
33 claims for collection from a collection agency or attorney whose place  
34 of business is outside the state.

35 (2) Collect or attempt to collect a claim by the use of any means  
36 contrary to the postal laws and regulations of the United States postal  
37 department.

1       (3) Publish or post or cause to be published or posted, any list of  
2 debtors commonly known as "bad debt lists" or threaten to do so. For  
3 purposes of this chapter, a "bad debt list" means any list of natural  
4 persons alleged to fail to honor their lawful debts. However, nothing  
5 herein shall be construed to prohibit a licensee from communicating to  
6 its customers or clients by means of a coded list, the existence of a  
7 check dishonored because of insufficient funds, not sufficient funds or  
8 closed account by the financial institution servicing the debtor's  
9 checking account: PROVIDED, That the debtor's identity is not readily  
10 apparent: PROVIDED FURTHER, That the licensee complies with the  
11 requirements of subsection (10)(e) of this section.

12       (4) Have in his or her possession or make use of any badge, use a  
13 uniform of any law enforcement agency or any simulation thereof, or  
14 make any statements which might be construed as indicating an official  
15 connection with any federal, state, county, or city law enforcement  
16 agency, or any other governmental agency, while engaged in collection  
17 agency business.

18       (5) Perform any act or acts, either directly or indirectly,  
19 constituting the unauthorized practice of law.

20       (6) Advertise for sale or threaten to advertise for sale any claim  
21 as a means of endeavoring to enforce payment thereof or agreeing to do  
22 so for the purpose of soliciting claims, except where the licensee has  
23 acquired claims as an assignee for the benefit of creditors or where  
24 the licensee is acting under court order.

25       (7) Use any name while engaged in the making of a demand for any  
26 claim other than the name set forth on his or her or its current  
27 license issued hereunder.

28       (8) Give or send to any debtor or cause to be given or sent to any  
29 debtor, any notice, letter, message, or form, other than through proper  
30 legal action, process, or proceedings, which represents or implies that  
31 a claim exists unless it shall indicate in clear and legible type:

32           (a) The name of the licensee and the city, street, and number at  
33 which he or she is licensed to do business;

34           (b) The name of the original creditor to whom the debtor owed the  
35 claim if such name is known to the licensee or employee: PROVIDED,  
36 That upon written request of the debtor, the licensee shall provide  
37 this name to the debtor or cease efforts to collect on the debt until  
38 this information is provided;

1       (c) If the notice, letter, message, or form is the first notice to  
2 the debtor or if the licensee is attempting to collect a different  
3 amount than indicated in his or her or its first notice to the debtor,  
4 an itemization of the claim asserted must be made including:

5           (i) Amount owing on the original obligation at the time it was  
6 received by the licensee for collection or by assignment;

7           (ii) Interest or service charge, collection costs, or late payment  
8 charges, if any, added to the original obligation by the original  
9 creditor, customer or assignor before it was received by the licensee  
10 for collection, if such information is known by the licensee or  
11 employee: PROVIDED, That upon written request of the debtor, the  
12 licensee shall make a reasonable effort to obtain information on such  
13 items and provide this information to the debtor;

14           (iii) Interest or service charge, if any, added by the licensee or  
15 customer or assignor after the obligation was received by the licensee  
16 for collection;

17           (iv) Collection costs, if any, that the licensee is attempting to  
18 collect;

19           (v) Attorneys' fees, if any, that the licensee is attempting to  
20 collect on his or her or its behalf or on the behalf of a customer or  
21 assignor; and

22           (vi) Any other charge or fee that the licensee is attempting to  
23 collect on his or her or its own behalf or on the behalf of a customer  
24 or assignor;

25       (d) If the notice, letter, message, or form concerns a judgment  
26 obtained against the debtor, no itemization of the amounts contained in  
27 the judgment is required, except postjudgment interest, if claimed, and  
28 the current account balance;

29       (e) If the notice, letter, message, or form is the first notice to  
30 the debtor, an itemization of the claim asserted must be made including  
31 the following information:

32           (i) The original account number or redacted original account number  
33 assigned to the debt, if known to the licensee or employee: PROVIDED,  
34 That upon written request of the debtor, the licensee must make a  
35 reasonable effort to obtain this information or cease efforts to  
36 collect on the debt until this information is provided; and

37           (ii) The date of the last payment to the creditor on the subject  
38 debt by the debtor, if known to the licensee or employee: PROVIDED,

1 That upon written request of the debtor, the licensee must make a  
2 reasonable effort to obtain this information or cease efforts to  
3 collect on the debt until this information is provided.

4 (9) Communicate in writing with a debtor concerning a claim through  
5 a proper legal action, process, or proceeding, where such communication  
6 is the first written communication with the debtor, without providing  
7 the information set forth in subsection (8)(c) of this section in the  
8 written communication.

9 (10) Communicate or threaten to communicate, the existence of a  
10 claim to a person other than one who might be reasonably expected to be  
11 liable on the claim in any manner other than through proper legal  
12 action, process, or proceedings except under the following conditions:

13 (a) A licensee or employee of a licensee may inform a credit  
14 reporting bureau of the existence of a claim. If the licensee or  
15 employee of a licensee reports a claim to a credit reporting bureau,  
16 the licensee shall, upon receipt of written notice from the debtor that  
17 any part of the claim is disputed, notify the credit reporting bureau  
18 of the dispute by written or electronic means and create a record of  
19 the fact of the notification and when the notification was provided;

20 (b) A licensee or employee in collecting or attempting to collect  
21 a claim may communicate the existence of a claim to a debtor's employer  
22 if the claim has been reduced to a judgment;

23 (c) A licensee or employee in collecting or attempting to collect  
24 a claim that has not been reduced to judgment, may communicate the  
25 existence of a claim to a debtor's employer if:

26 (i) The licensee or employee has notified or attempted to notify  
27 the debtor in writing at his or her last known address or place of  
28 employment concerning the claim and the debtor after a reasonable time  
29 has failed to pay the claim or has failed to agree to make payments on  
30 the claim in a manner acceptable to the licensee, and

31 (ii) The debtor has not in writing to the licensee disputed any  
32 part of the claim: PROVIDED, That the licensee or employee may only  
33 communicate the existence of a claim which has not been reduced to  
34 judgment to the debtor's employer once unless the debtor's employer has  
35 agreed to additional communications.

36 (d) A licensee may for the purpose of locating the debtor or  
37 locating assets of the debtor communicate the existence of a claim to

1 any person who might reasonably be expected to have knowledge of the  
2 whereabouts of a debtor or the location of assets of the debtor if the  
3 claim is reduced to judgment, or if not reduced to judgment, when:

4 (i) The licensee or employee has notified or attempted to notify  
5 the debtor in writing at his or her last known address or last known  
6 place of employment concerning the claim and the debtor after a  
7 reasonable time has failed to pay the claim or has failed to agree to  
8 make payments on the claim in a manner acceptable to the licensee, and

9 (ii) The debtor has not in writing disputed any part of the claim.

10 (e) A licensee may communicate the existence of a claim to its  
11 customers or clients if the claim is reduced to judgment, or if not  
12 reduced to judgment, when:

13 (i) The licensee has notified or attempted to notify the debtor in  
14 writing at his or her last known address or last known place of  
15 employment concerning the claim and the debtor after a reasonable time  
16 has failed to pay the claim or has failed to agree to make payments on  
17 the claim in a manner acceptable to the licensee, and

18 (ii) The debtor has not in writing disputed any part of the claim.

19 (11) Threaten the debtor with impairment of his or her credit  
20 rating if a claim is not paid: PROVIDED, That advising a debtor that  
21 the licensee has reported or intends to report a claim to a credit  
22 reporting agency is not considered a threat if the licensee actually  
23 has reported or intends to report the claim to a credit reporting  
24 agency.

25 (12) Communicate with the debtor after notification in writing from  
26 an attorney representing such debtor that all further communications  
27 relative to a claim should be addressed to the attorney: PROVIDED,  
28 That if a licensee requests in writing information from an attorney  
29 regarding such claim and the attorney does not respond within a  
30 reasonable time, the licensee may communicate directly with the debtor  
31 until he or she or it again receives notification in writing that an  
32 attorney is representing the debtor.

33 (13) Communicate with a debtor or anyone else in such a manner as  
34 to harass, intimidate, threaten, or embarrass a debtor, including but  
35 not limited to communication at an unreasonable hour, with unreasonable  
36 frequency, by threats of force or violence, by threats of criminal  
37 prosecution, and by use of offensive language. A communication shall  
38 be presumed to have been made for the purposes of harassment if:

1       (a) It is made with a debtor or spouse in any form, manner, or  
2 place, more than three times in a single week, unless the licensee is  
3 responding to a communication from the debtor or spouse;

4       (b) It is made with a debtor at his or her place of employment more  
5 than one time in a single week, unless the licensee is responding to a  
6 communication from the debtor;

7       (c) It is made with the debtor or spouse at his or her place of  
8 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a  
9 telephone is presumed to be received in the local time zone to which  
10 the area code of the number called is assigned for landline numbers,  
11 unless the licensee reasonably believes the telephone is located in a  
12 different time zone. If the area code is not assigned to landlines in  
13 any specific geographic area, such as with toll-free telephone numbers,  
14 a call to a telephone is presumed to be received in the local time zone  
15 of the debtor's last known place of residence, unless the licensee  
16 reasonably believes the telephone is located in a different time zone.

17       (14) Communicate with the debtor through use of forms or  
18 instruments that simulate the form or appearance of judicial process,  
19 the form or appearance of government documents, or the simulation of a  
20 form or appearance of a telegraphic or emergency message.

21       (15) Communicate with the debtor and represent or imply that the  
22 existing obligation of the debtor may be or has been increased by the  
23 addition of attorney fees, investigation fees, service fees, or any  
24 other fees or charges when in fact such fees or charges may not legally  
25 be added to the existing obligation of such debtor.

26       (16) Threaten to take any action against the debtor which the  
27 licensee cannot legally take at the time the threat is made.

28       (17) Send any telegram or make any telephone calls to a debtor or  
29 concerning a debt or for the purpose of demanding payment of a claim or  
30 seeking information about a debtor, for which the charges are payable  
31 by the addressee or by the person to whom the call is made: PROVIDED,  
32 That:

33       (a) This subsection does not prohibit a licensee from attempting to  
34 communicate by way of a cellular telephone or other wireless device:  
35 PROVIDED, That a licensee cannot cause charges to be incurred to the  
36 recipient of the attempted communication more than three times in any  
37 calendar week when the licensee knows or reasonably should know that

1 the number belongs to a cellular telephone or other wireless device,  
2 unless the licensee is responding to a communication from the debtor or  
3 the person to whom the call is made.

4 (b) The licensee is not in violation of (a) of this subsection if  
5 the licensee at least monthly updates its records with information  
6 provided by a commercial provider of cellular telephone lists that the  
7 licensee in good faith believes provides reasonably current and  
8 comprehensive data identifying cellular telephone numbers, calls a  
9 number not appearing in the most recent list provided by the commercial  
10 provider, and does not otherwise know or reasonably should know that  
11 the number belongs to a cellular telephone.

12 (c) This subsection may not be construed to increase the number of  
13 communications permitted pursuant to subsection (13)(a) of this  
14 section.

15 (18) Call, or send a text message or other electronic communication  
16 to, a cellular telephone or other wireless device more than twice in  
17 any day when the licensee knows or reasonably should know that the  
18 number belongs to a cellular telephone or other wireless device, unless  
19 the licensee is responding to a communication from the debtor or the  
20 person to whom the call, text message, or other electronic  
21 communication is made. The licensee is not in violation of this  
22 subsection if the licensee at least monthly updates its records with  
23 information provided by a commercial provider of cellular telephone  
24 lists that the licensee in good faith believes provides reasonably  
25 current and comprehensive data identifying cellular telephone numbers,  
26 calls a number not appearing in the most recent list provided by the  
27 commercial provider, and does not otherwise know or reasonably should  
28 know that the number belongs to a cellular telephone. Nothing in this  
29 subsection may be construed to increase the number of communications  
30 permitted pursuant to subsection (13)(a) of this section.

31 (19) Intentionally block its telephone number from displaying on a  
32 debtor's telephone.

33 (20) In any manner convey the impression that the licensee is  
34 vouched for, bonded to or by, or is an instrumentality of the state of  
35 Washington or any agency or department thereof.

36 (21) Collect or attempt to collect in addition to the principal  
37 amount of a claim any sum other than allowable interest, collection  
38 costs or handling fees expressly authorized by statute, and, in the

1 case of suit, attorney's fees and taxable court costs. A licensee may  
2 collect or attempt to collect collection costs and fees, including  
3 contingent collection fees, as authorized by a written agreement or  
4 contract, between the licensee's client and the debtor, in the  
5 collection of a commercial claim. The amount charged to the debtor for  
6 collection services shall not exceed thirty-five percent of the  
7 commercial claim.

8 (22) Procure from a debtor or collect or attempt to collect on any  
9 written note, contract, stipulation, promise or acknowledgment under  
10 which a debtor may be required to pay any sum other than principal,  
11 allowable interest, except as noted in subsection (21) of this section,  
12 and, in the case of suit, attorney's fees and taxable court costs.

13 (23) Bring an action or initiate an arbitration proceeding on a  
14 claim when the licensee knows, or reasonably should know, that such  
15 suit or arbitration is barred by the applicable statute of limitations.

16 (24) Upon notification by a debtor that the debtor disputes all  
17 debts arising from a series of dishonored checks, automated  
18 clearinghouse transactions on a demand deposit account, or other  
19 preprinted written instruments, initiate oral contact with a debtor  
20 more than one time in an attempt to collect from the debtor debts  
21 arising from the identified series of dishonored checks, automated  
22 clearinghouse transactions on a demand deposit account, or other  
23 preprinted written instruments when: (a) Within the previous one  
24 hundred eighty days, in response to the licensee's attempt to collect  
25 the initial debt assigned to the licensee and arising from the  
26 identified series of dishonored checks, automated clearinghouse  
27 transactions on a demand deposit account, or other preprinted written  
28 instruments, the debtor in writing notified the licensee that the  
29 debtor's checkbook or other series of preprinted written instruments  
30 was stolen or fraudulently created; (b) the licensee has received from  
31 the debtor a certified copy of a police report referencing the theft or  
32 fraudulent creation of the checkbook, automated clearinghouse  
33 transactions on a demand deposit account, or series of preprinted  
34 written instruments; (c) in the written notification to the licensee or  
35 in the police report, the debtor identified the financial institution  
36 where the account was maintained, the account number, the magnetic ink  
37 character recognition number, the full bank routing and transit number,  
38 and the check numbers of the stolen checks, automated clearinghouse

1 transactions on a demand deposit account, or other preprinted written  
2 instruments, which check numbers included the number of the check that  
3 is the subject of the licensee's collection efforts; (d) the debtor  
4 provides, or within the previous one hundred eighty days provided, to  
5 the licensee a legible copy of a government-issued photo  
6 identification, which contains the debtor's signature and which was  
7 issued prior to the date of the theft or fraud identified in the police  
8 report; and (e) the debtor advised the licensee that the subject debt  
9 is disputed because the identified check, automated clearinghouse  
10 transaction on a demand deposit account, or other preprinted written  
11 instrument underlying the debt is a stolen or fraudulently created  
12 check or instrument.

13 The licensee is not in violation of this subsection if the licensee  
14 initiates oral contact with the debtor more than one time in an attempt  
15 to collect debts arising from the identified series of dishonored  
16 checks, automated clearinghouse transactions on a demand deposit  
17 account, or other preprinted written instruments when: (i) The  
18 licensee acted in good faith and relied on their established practices  
19 and procedures for batching, recording, or packeting debtor accounts,  
20 and the licensee inadvertently initiates oral contact with the debtor  
21 in an attempt to collect debts in the identified series subsequent to  
22 the initial debt assigned to the licensee; (ii) the licensee is  
23 following up on collection of a debt assigned to the licensee, and the  
24 debtor has previously requested more information from the licensee  
25 regarding the subject debt; (iii) the debtor has notified the licensee  
26 that the debtor disputes only some, but not all the debts arising from  
27 the identified series of dishonored checks, automated clearinghouse  
28 transactions on a demand deposit account, or other preprinted written  
29 instruments, in which case the licensee shall be allowed to initiate  
30 oral contact with the debtor one time for each debt arising from the  
31 series of identified checks, automated clearinghouse transactions on a  
32 demand deposit account, or written instruments and initiate additional  
33 oral contact for those debts that the debtor acknowledges do not arise  
34 from stolen or fraudulently created checks or written instruments; (iv)  
35 the oral contact is in the context of a judicial, administrative,  
36 arbitration, mediation, or similar proceeding; or (v) the oral contact  
37 is made for the purpose of investigating, confirming, or authenticating  
38 the information received from the debtor, to provide additional

1 information to the debtor, or to request additional information from  
2 the debtor needed by the licensee to accurately record the debtor's  
3 information in the licensee's records.

4 (25) Submit an affidavit or other request pursuant to chapter 6.32  
5 RCW asking a superior or district court to transfer a bond posted by a  
6 debtor subject to a money judgment to the licensee, when the debtor has  
7 appeared as required.

8 **Sec. 3.** RCW 19.16.260 and 2011 c 336 s 521 are each amended to  
9 read as follows:

10 No collection agency or out-of-state collection agency may bring or  
11 maintain an action in any court of this state involving the collection  
12 of its own claim or a claim of any third party without alleging and  
13 proving that he, she, or it is duly licensed under this chapter and has  
14 satisfied the bonding requirements hereof, if applicable: PROVIDED,  
15 That in any case where judgment is to be entered by default, it shall  
16 not be necessary for the collection agency or out-of-state collection  
17 agency to prove such matters.

18 A copy of the current collection agency license or out-of-state  
19 collection agency license, certified by the director to be a true and  
20 correct copy of the original, shall be prima facie evidence of the  
21 licensing and bonding of such collection agency or out-of-state  
22 collection agency as required by this chapter.

23 NEW SECTION. **Sec. 4.** Sections 1 and 3 of this act take effect  
24 October 1, 2013.

Passed by the House March 9, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

# EXHIBIT 7

# FINAL BILL REPORT

## SHB 2476

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### C 30 L 20

Synopsis as Enacted

**Brief Description:** Concerning debt buyers.

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Walen, Duerr, Kloba, Kilduff, Leavitt, Lekanoff, Orwall, Davis, Doglio, Frame, Macri, Goodman and Ormsby).

**House Committee on Civil Rights & Judiciary**  
**Senate Committee on Law & Justice**

**Background:**

Collection agencies are regulated by the Collection Agency Act (CAA). The CAA creates a licensing system, establishes a regulatory board, sets forth requirements and prohibited practices, and provides remedies. The term collection agency is defined to encompass several categories of persons and entities, including any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims.

A claim is any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied. This includes personal, household, family, and business debts.

No person or business may act as a collection agency without first acquiring a license from the Department of Licensing (DOL). The DOL may deny, revoke, not renew, or suspend licenses for reasons related to conduct, financial circumstances, and noncompliance with the law.

The CAA sets forth a number of prohibited practices. For example, collection agencies may not:

- contact a debtor with excessive frequency or at an unreasonable hour;
- publish an individual's debt or share the amount due with a third party; or
- misrepresent themselves when communicating with a debtor.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Violations of these prohibited practices are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce under the Consumer Protection Act. Individual debtors may file complaints with the regulatory board or with the Attorney General. Individuals may also bring civil suits against collection agencies for alleged violations of the CAA for injunctive relief and damages. If a prohibited act or practice is committed in the collection of a claim, the original claim or obligation may be recovered from the debtor, but neither the licensee, the customer of the licensee, nor any other person who may thereafter be legally entitled to collect is allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on the claim.

**Summary:**

A new term, debt buyer, is specifically defined under the Collection Agency Act (CAA) to mean any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims. These persons and entities, now called debt buyers, continue to be one category or type of collection agency.

Provisions are added to the CAA that are specific only to debt buyers. No debt buyer may:

- bring any legal action against a debtor without attaching to the complaint a copy of the contract or other writing evidencing the original debt that contains the signature of the debtor. Specific provision is made for a claim based on a credit card debt for which a signed writing does not exist or on an electronic transaction for which a signed writing never existed;
- request a default judgment against a debtor in any legal action without providing to the court evidence establishing certain enumerated facts in a form that satisfies the requirements of the court rule and statute governing business records as evidence; or
- bring any legal action against a debtor without disclosing in the complaint: that the action is being brought by a debt buyer; the date the claim or obligation was purchased; the identity of the person or entity from whom or which the claim or obligation was purchased; that the plaintiff may have purchased the claim or obligation for less than the value stated in the complaint; if the claim or obligation was at any time sold without any representation or warranty of accuracy, a statement to that effect; and that the action is being commenced within, and is not barred by, an applicable statute of limitations.

Violations of these prohibited practices are unfair and deceptive practices or unfair methods of competition in the conduct of trade or commerce for purposes of the Consumer Protection Act. If one of these prohibited acts or practices is committed in the collection of a claim, the original claim or obligation may be recovered from the debtor, but neither the licensee, the customer of the licensee, nor any other person who may thereafter be legally entitled to collect is allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on the claim.

These amendments to the CAA apply prospectively only and not retroactively. They apply with respect to delinquent or charged off claims purchased for collection purposes by a debt buyer on or after the effective date.

**Votes on Final Passage:**

House	96	0
Senate	48	0

**Effective:** June 11, 2020